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REPORT
of
THE ROYAL COMMISSION
APPOINTED TO INQUIRE INTO
THE FAILURE
of
ATLANTIC ACCEPTANCE CORPORATION
LIMITED

THE HON. S. H. S. HUGHES

VOLUME ONE

September 12, 1969

COMMISSIONER

THE HONOURABLE S. H. S. HUGHES

COUNSEL

A. E. SHEPHERD, Q.C.

ASSISTANT COUNSEL

R. I. CARTWRIGHT

SECRETARY

J. B. LIND, C.D.

REGISTRAR

V. F. CUNNINGTON, C.D.

FINANCIAL AND
AUDITING ADVISER

J. A. ORR, F.C.A.



[Great Seal]



Herbert

PROVINCE OF ONTARIO

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO THE HONOURABLE SAMUEL H. S. HUGHES, of Our Village of Forest Hill, in Our Province of Ontario, a Justice of Our Supreme Court of Ontario and One of Our Counsel learned in the Law,

GREETING:

WHEREAS in and by Chapter 323 of The Revised Statutes of Ontario, 1960, entitled "The Public Inquiries Act", it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, he may, by Commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deems requisite for the full investigation of the matters into which he or they are appointed to examine;

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned:

THE COMMISSION

NOW KNOW Ye that We, having and reposing full trust and confidence in you the said Samuel H. S. Hughes DO HEREBY APPOINT you to be Our Commissioner,

1. To investigate, inquire into and report upon,
 - (a) The events involved in and the causes of the recent failure of Atlantic Acceptance Corporation Limited to meet the obligations evidenced by its securities.
 - (b) The effect this failure has had on the money market in the Province of Ontario and on the affairs of any person, company, corporation or organization.
 - (c) The activities and conduct of any person, company, corporation or organization in relation, whether direct or indirect, to such failure and into the activities and conduct of any person, company, corporation or organization including British Mortgage & Trust Company who is, was or claims to be a creditor, debtor or security holder of Atlantic Acceptance Corporation Limited, or of any company, corporation or organization which, in the opinion of you Our said Commissioner, is or was a subsidiary of, or associated with, Atlantic Acceptance Corporation Limited.
 - (d) The existing legislation relating to loan and trust corporations and to corporations engaged in the finance business and the money market generally, and to consider what, if any, additional legislation may be required in regard thereto.
2. To make such recommendations in regard to the above, as you Our said Commissioner may deem fit, to the Lieutenant Governor in Council.

AND WE DO HEREBY CONFER on you, Our said Commissioner, the power to summon any person and require him to give evidence on oath and to produce such documents and things as you Our said Commissioner deem requisite for the full investigation of the matters into which you are appointed to examine.

AND WE DO HEREBY FURTHER ORDER that all Our departments, boards, commissions, agencies and committees shall assist you, Our said Commissioner, to the fullest extent, and that in order to carry out your duties and functions, you shall have the authority to engage such counsel, research and other staff and technical advisers as you deem proper.

THE COMMISSION

TO HAVE, HOLD AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: THE HONOURABLE WILLIAM EARL ROWE, A Member of Our Privy Council for Canada, Doctor of Laws, Doctor of Social Science,

LIEUTENANT GOVERNOR OF OUR PROVINCE OF ONTARIO.

at Our City of Toronto in Our said Province, this twelfth day of August in the year of Our Lord one thousand nine hundred and sixty-five and in the fourteenth year of Our Reign.

BY COMMAND

A handwritten signature in dark ink, appearing to read 'H. L. Rowntree', with a long horizontal stroke extending from the end of the name.

H. L. ROWNTREE,
*Acting Provincial Secretary
And Minister of Citizenship*

PRINTED AND BOUND IN CANADA

TO HIS HONOUR

THE LIEUTENANT GOVERNOR IN COUNCIL

MAY IT PLEASE YOUR HONOUR,

I, Samuel H. S. Hughes, appointed a Commissioner under the Public Inquiries Act by Letters Patent issued pursuant to Order-in-Council dated the twelfth day of August 1965 to investigate, inquire into and report upon the failure of Atlantic Acceptance Corporation Limited and other matters germane thereto:

BEG TO SUBMIT TO YOUR HONOUR

MY REPORT

CORRIGENDA
in
VOLUME ONE

✓ **Page ix, last line**

For "223"
read "123"

✓ **Page 4, line 8**

For "Atlantic's notes"
read "Atlantic's senior notes"

✓ **Page 68, line 18**

For "Talbot Acceptance Company"
read "Talbot Finance Company"

✓ **Page 79, line 16 and page 85, line 5**

For "General Spray Services Inc."
read "General Spray Service Inc."

✓ **Page 99, lines 20-1**

For "Daylite of Grand Bahama Limited"
read "Daylite of Grand Bahama Company Limited"

✓ **Page 107, line 44**

For "Everest Office Machines Limited"
read "Everest Office Machine Company Limited"

Page 124, line 8

For "*ACQUISITION*"
read "*ACQUISITION*"

✓ **Page 126, line 32**

For "shares of debentures"
read "shares and debentures"

✓ **Page 156, line 16**

For "\$100,000"
read "\$10,000"

✓ **Page 366, line 29**

For "Manhattan Sound West Corporation"
read "Manhattan West Sound Corporation"

✓ **Page 407, lines 41-2**

For "Everest Office Equipment Company Limited"
read "Everest Office Machine Company Limited"

Page 410, line 11

For "Willson Stationery & Envelopes"
read "Willson Stationers & Envelopes"

✓ **Page 449, line 6**

For "Macpherson's"
read "MacPherson's"

✓ **Page 666, line 28**

For "Bernard A. Thomson"
read "Bernard A. Thompson"

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EDITORIAL NOTE

Throughout the text of the report footnotes are numbered consecutively as they occur within each section under a sub-heading so that at the commencement of a new subheaded section the numbering reverts to number 1 in each case.

The tables referred to in the text will be found in the volume entitled "Tables and Appendices". Generally speaking the tables and the schedules contained in the text are both in structure and form exactly as entered in evidence, but where errors have been subsequently detected they have been corrected and in some cases amendments have been made for the sake of clarification.

It will be appreciated that the requirement to produce daily copy of the transcripts of evidence has led to some variations from accepted spellings and textual aberrations of other kinds. Wherever possible these have been submitted to the shorthand reporter concerned for reconsideration of his notes and the insertion of errata where necessary in the volumes of evidence. In the few instances where obvious stenographic errors have occurred, and have passed undetected in this process, the necessary changes have been made, although no alteration has been made of the sense of a passage or the language used as transcribed.

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CHAPTER I

Default

On June 9, 1965, La Société Financière pour la Commerce et l'Industrie S.F.C.I. Limited, a private investment bank situated in Montreal and associated with La Banque Nationale pour la Commerce et l'Industrie B.N.C.I. and La Banque d'Union Parisienne B.U.P. of Paris, acting through its agent, Royal Securities Corporation Limited of Halifax and Montreal, made its twelfth and final short-term loan to Atlantic Acceptance Corporation Limited of Oakville. Atlantic Acceptance, with over 130 acceptance and small loans offices in every province of Canada except Quebec, and with stated assets of over \$150,000,000, was the sixth largest sales finance company in Canada, and fourth among those not wholly-owned by corporations in the United States.

All the twelve transactions in which S.F.C.I. was the lender and Atlantic Acceptance the borrower, the first of which occurred on December 11, 1964, were of a similar type and consisted of the lending of large sums either over a weekend from Friday to Monday or for a period of not more than six days, evidence of which were promissory notes secured by a charge on certain assets of the borrower according to the provisions of a deed of trust entered into on February 1, 1961 by Atlantic Acceptance and Montreal Trust Company as trustee, as varied and extended by eleven subsequent trust deeds supplemental thereto between the same parties.

The twelfth loan was of \$5,000,000 at 4½ % from Friday, June 11 to Monday, June 14. On the Monday, Atlantic Acceptance issued in payment a cheque which was refused by the bank on which it was drawn because there were insufficient funds on deposit. For a Canadian company of this size doing business in the field of finance in times of unexampled affluence, in respect of which no sign of instability had been

DEFAULT

previously detected, and which had then debt outstanding in excess of \$130,000,000 owing to lenders which included institutions regarded as the most shrewd and experienced investors in North America, suddenly to default on a routine obligation was an event which astonished the financial world. From it flowed the collapse of Atlantic Acceptance and all its subsidiaries, the bankruptcy of many companies dependent upon it, the ruin of many lives and the searching re-examination of financial practices and legislation of long standing.

The practice of raising money by the issue of secured promissory notes is relatively new in Canada. Like so many of our financial expedients it began in the United States although, for reasons which will be considered in due course, the device of providing security by charging assets in favour of a trustee has not flourished there and has been subjected to some criticism here. None the less, since the last war and beginning in the early 1950's, sales finance companies in particular have resorted to it as a means of securing loans by pledging with a trustee for the lenders the accounts receivable which constitute the bulk of their assets. In principle this process does not differ from that of issuing corporation bonds similarly secured and subject to the safeguards provided by a trust deed, frequently described as a bond mortgage. A greater flexibility in the terms of repayment and advantages inherent in the operation of the money market have combined to make the issue of notes of this type a favourite in the operations of finance companies and have attracted in particular the interest of lenders with large amounts of cash available for short-term investment. On the eve of its transaction with S.F.C.I. Atlantic Acceptance had, in the categories of senior, subordinated and junior subordinated debt, issued short, medium and long-term notes to the face value of just over \$128,000,000.¹ The face value of short-term notes outstanding at the end of May was \$52,824,000, of which \$16,453,000 were payable in American funds.² Of these, excluding those given to secure bank loans, short-term notes in the amount of \$4,700,000 were payable on demand and others to the face value of \$19,102,400 were to mature between June 14 and June 25.³

A general observation on the organization of Atlantic Acceptance is here necessary in explanation of the events of this portion of the month of June. In addition to conducting an instalment sales finance business on its own account it was the parent company of a number of subsidiaries. Of these Atlantic Finance Corporation Limited was engaged in the business of making personal loans to members of the public, a large proportion of which were under \$1,500 and were

¹Exhibit 786.

²Exhibit 589.

³Exhibit 591.

subject to the provisions of the Small Loans Act,⁴ a statute of the Parliament of Canada. The two companies were operated from the head office of Atlantic Acceptance at Oakville at a location upon which the company had built a modern office building in process of expansion; it was at Oakville that the far-flung acceptance finance and personal loan business was conducted. Two other subsidiaries had their head offices in Toronto; Standard Discount Corporation Limited which conducted a much smaller but profitable sales finance business in "soft" goods, and Premier Finance Corporation Limited, the operations of which had been decidedly unprofitable and which at this point had ceased lending in any systematic way. These two companies had been acquired by Atlantic Acceptance, the former in 1961, and the latter in 1959. Business of a different kind was conducted from what were known as the "executive offices" of the company at 100 Adelaide Street West in Toronto where Campbell Powell Morgan, the president and general manager of Atlantic Acceptance, habitually worked and from which he directed the operations of two subsidiary companies, Commodore Sales Acceptance Limited, which was in turn the parent of the wholly-owned Commodore Factors Limited, and Adelaide Acceptance Limited. These three companies were exclusively engaged in the fields of factoring and capital loans. Their fortunes, as will be seen, were closer to the heart of C. P. Morgan than any other part of the complex, and it was from the offices at 100 Adelaide Street West that he and a small personal staff surveyed the money market and pursued their delicate operations in it.

Immediately outside Morgan's private office at 100 Adelaide Street West was an ante-room containing the desks of the treasurer of Atlantic Acceptance, Barrie L. McFadden,⁵ and his assistant, David McGowan. McFadden had been with the company since March of 1960, first as assistant treasurer, and latterly since June of 1964, treasurer of the parent company, as well as being assistant treasurer of Commodore Sales Acceptance, Adelaide Acceptance and Premier Finance. Before this he had been with the Toronto-Dominion Bank for ten years, finally as a liability officer at the bank's head office. It was a measure of the pre-occupations of his employer, and perhaps of all finance companies, that McFadden's prime responsibility at this stage was borrowing money. For this purpose he was in close touch with dealers in securities, and had constantly under his eye the maturity dates of Atlantic Acceptance notes and the interest rates of his competitors. Industrial Acceptance Corporation Limited and Traders Finance Corporation Limited were for him, as for others borrowing short-term money, the bell-wethers of the industry and Atlantic, for reasons which will become more apparent as

⁴R.S.C. 1952, c. 251.

⁵Evidence Volumes 6 and 89.

DEFAULT

this report proceeds, adopted the simple expedient of paying more interest up to a quarter of a point and higher commissions to dealers (36¢ per annum per \$100 as compared to 24¢ in the case of Industrial Acceptance) than any other borrower of comparable stature.

Lines of Credit

Certain obstacles stood in the way of Atlantic's borrowing activities. Much will be said later of the restraints imposed by the trust deed under which all ~~Atlantic's notes~~^{*} were issued. Although no legislation imposed a limit on the borrowing of finance companies and adoption of the device of issuing notes has largely emancipated these companies from their former absolute dependence upon the banks, a practical restraint upon borrowing is exerted by the "lines of credit" which the latter see fit to allow them. Atlantic in 1965 had bank lines of \$3,700,000 with the Toronto-Dominion Bank, \$2,000,000 with the Royal Bank of Canada and \$750,000 with the Bank of Nova Scotia, the last being in respect of its subsidiary, Commodore Sales Acceptance Limited. For the purpose of dealing with the events of mid-June, it is only necessary to consider its relationship with the Toronto-Dominion Bank since it was with this bank that Atlantic did its regular business in Toronto and Oakville and which was the "lead" bank, to use the jargon of the trade. Under provisions of the trust deed, the company had covenanted to maintain at all times a loan of \$1,250,000 with the Toronto-Dominion Bank apparently to assure to the noteholders the vigilance of this institution. The Toronto-Dominion Bank lines had been increased in December 1962 to \$5,000,000, with the understanding that only \$3,000,000 would be normally used and the remainder left as a reserve in case of emergency. As a result of the bank reviewing the company's position in the spring and summer of 1963, this had been reduced to \$3,700,000, with the provision by the bank that only the \$1,250,000 required by the trust deed would be regularly used. Atlantic concealed this development from its noteholders whom it continued to inform, in the supplementary information supplied to the trustee, and circulated to them at the end of 1963 and 1964, that its line of credit with the Toronto-Dominion Bank was \$5,000,000.¹ McFadden certainly thought that as a result of informal conversations with officers of the bank his company was entitled to a "bulge" of \$5,000,000 and could borrow up to that amount without express authorization. Mr. A. E. Woods, at the time assistant general manager for the Ontario division of the bank, in his evidence before the Commission, said that he had protested verbally to Morgan and McFadden when this misrepresentation of the line of credit was brought to his attention, and on both occasions had been told that they had always felt that the line of credit was confirmed at the

¹Exhibits 92 and 97.

larger figure. As to the "bulge" this was a temporary affair, according to Woods, and one which required special authorization by the bank's officers in an emergency of short duration. The importance of this type of bank accommodation, however slender it may appear in comparison with a company's ability to borrow from the public and at large, consists in enabling a borrower like Atlantic to meet individual maturities and provide over short periods an overdraft for its extensive branch operations. But in the early spring of 1965 a combination of pressures was forcing Atlantic far beyond the normal use of its line of credit and the bank into a mood of growing uneasiness.

Examination of the internal memoranda which surrounded the bank's decision to cut back the line of credit from \$5,000,000 to \$3,700,000 in 1963 shows that even in that year, and although the low delinquency rate of Atlantic loans was considered wholly admirable, its executive officers viewed the company's rapid growth with mixed feelings. As custodian for the trustee, the bank was in a position to peruse the notes of Atlantic and its subsidiaries which were lodged as accounts receivable under the trust deed and in a letter of December 17, 1962 the then assistant general manager, Mr. E. R. Lawrence, had sought Mr. Morgan's comment about seven loans which had been made by Atlantic or its subsidiaries "covering the security and its value behind the risks as well as the pay out period."² Lawrence appears to have been reassured but not to the extent of maintaining the \$5,000,000 bank line. When the lower limit was finally decided on in August 1963 the general manager of the bank of that day observed that "this company is expanding in a very aggressive fashion and we are looking forward to receipt of the detailed analysis of their accounts at December 31st next which should throw considerable light on the soundness or otherwise of management's credit policies."³ C. P. Morgan none the less persisted and in the spring of 1965 the bank was once again engaged in considering an application for an increase to a limit of \$5,000,000. By this time his companies had passed through a period of unprecedented expansion in the case of those assets represented by their accounts receivable and had doubled the number of branch offices during the previous two-year period. Now there was a cloud on the horizon which was causing concern to the whole financial community in Canada. This was President Johnson's appeal of February 10, 1965 to United States corporations to support the American dollar in the current balance-of-payments crisis. The "guide-lines" which the President provided included an injunction to restrict lending to foreign borrowers with a view to making more domestic funds available in the United States.

The extent to which the conditions prevailing in the money market in the spring of 1965 affected Atlantic's ability to borrow is considered in

²Exhibit 595.

³Exhibit 596.

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detail in Chapter XIX, but it must here suffice to record the immediate problems facing the company in the month of June. From the liability ledgers of the Toronto-Dominion Bank⁴ it appears that Atlantic borrowing from the bank remained within its line of credit during 1965 up until March 16; then at the end of that day it reached \$4,750,000. After some fluctuation up and down it had by April 1 been reduced to the \$1,250,000 required by the trust deed. Nothing unusual transpired until April 22 when a liability of \$4,250,000 was recorded. On the following day it was down to \$1,250,000 but on April 26 the level of \$4,250,000 was again reached. Thereafter the level of liability began to vary with increasing irregularity. Two things should be borne in mind. On the one hand the Toronto-Dominion Bank had been the principal bankers for Atlantic Acceptance since its small beginnings in Hamilton in 1953. It was, as might be expected, deeply concerned with its welfare. In an emergency, and where borrowed funds were known to be on their way to the company's treasury in the course of a day or two, the bank's officers were prepared to make an accommodation which might on the face of things appear to be excessive. On the other hand there is no doubt about the settled view taken by them that their line of credit was to be used sparingly and, in the normal course, only to the extent of some 40% of its authorized limit, so as to allow for the "fall-in" of short-term maturities and moneys payable on demand. It should also be recognized that the system by which the liability records of the bank were maintained provided that the highest debit balance of the day should be reported even though it might be substantially reduced by deposits occurring later in the same business period. Returning then to the day-to-day liability situation, the records disclose that on April 28 it had risen to \$7,750,000 but two days later had declined to \$3,750,000. On May 3 the figure rises to \$8,750,000 and on May 6 to a peak of \$9,250,000, dropping again on the following day to \$3,750,000.

Before this point was reached disquiet at the bank had led Woods on April 30 to ask Morgan to come to his office for a discussion. Morgan promised the utmost co-operation, undertaking to make no more "wholesale" loans, to call in as many as possible as quickly as he could, and to attempt to raise money by "mortgages against large loans." It must be assumed from the tenor of Woods' evidence that on this occasion it was the loans of Atlantic Acceptance rather than those of its subsidiaries that were particularly discussed. The inference may be supported by the action which Morgan subsequently took, as will be seen. As a result of Woods' report of this discussion a more formal and more searching conference was arranged by the deputy general manager of the bank, Mr. E. R. Lawrence, on May 14, the day after Atlantic's liability to the bank had reached a high point of \$9,500,000.

⁴Exhibit 599.

According to Lawrence's notes,⁵ Morgan was accompanied by McFadden, C. R. Sherrill, his senior vice-president, and two vice-presidents in charge of the acceptance and small loans business and the company's comptroller. Lawrence and Woods represented the bank.

Lawrence's notes of this meeting may be quoted with advantage:

"A general discussion ensued as to the immediate problems facing Atlantic and Mr. Morgan explained that the roof had literally caved in as regards the availability of short-term funds at the present time and he stressed that the main reason for their tight position now was because of the Johnson edict regarding defence of the U.S.A. dollar. Mr. Lawrence probed him as to why they should be caught in just such a position and he went on to explain that Bank lines of credit for a finance company should not be utilized to the full extent but more or less kept as a reserve for contingencies and that normal expectations would be such that they would only utilize say 60% of available lines. Mr. Morgan went on to say that as far back as last January they had been assured of ample funds from the United States and it was hinted that our own participation should now be much greater for Atlantic in view of their substantial growth in assets however Mr. Lawrence and Mr. Woods explained that we have been holding the line with finance companies now for the past few years and that this feature was well known to them. It was intimated by Mr. Morgan and Mr. McFadden that part of their problem was that they did not have large enough lines of credit from the various Banks. Mr. Morgan assured us that everything possible was being done to ease the strain of Atlantic's financing and in turn upon our own position and he had just returned from New York where negotiations had been instituted for the raising of monies.

... Mr. Morgan reiterated that outside of a complete curtailment of new business they were doing everything possible to raise monies from any available source and the reason that he brought the other officers with him was in order that they would be acquainted with the seriousness of the situation. Mr. Lawrence made it quite clear that we were not happy with their present position which has placed the strain of their financing upon us and he stressed that we could not make any commitment regarding the future rather that we would just have to go along on a day-to-day basis and most certainly we did not wish to go above our present level of \$6/7,000,000 rather we would like to see loans reduced to line just as quickly as possible. Mr. Morgan understands that they must solve their own problems and certainly we regard the whole matter most seriously and he was informed that there were times when we actually wondered whether we could see him through for any given day."

To these notes Woods appended the following remarks on May 17:

"Mr. Morgan appears to be doing everything short of notifying the company's branches to stop buying paper, which would be tantamount to closing the operations down. He is satisfied he will have our advance

⁵Exhibit 601.

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in line within 45 days or sooner. Mr. Lawrence advised him no encouragement could be given that we would carry on other than on a day-to-day basis."

For the rest of the month of May Atlantic's liability to the Toronto-Dominion Bank declined as new funds became available. Then a sharp rise occurred at the beginning of June and by June 7 it had risen to \$8,250,000. At this point some relief was provided by a transaction first suggested by Belgian interests who were willing to advance a substantial sum to the company, provided that they received a deposit receipt from a chartered bank and secured the bank's obligation to pay ahead of Atlantic's. In effect this proposal would have involved a second step whereby the bank in question would have lent the money to Atlantic in its turn for a fraction of the total interest paid by the latter, and upon consideration the Toronto-Dominion Bank decided to advance \$4,000,000 United States funds from its International Department in New York in exchange for an Atlantic note undertaking to pay interest at 7%, the bank in fact requiring payment of interest at 6% only. This loan was for a period of 120 days and was completed on June 9. As a result, on June 10 the bank's demand loans had been reduced to \$4,250,000.

The result of the ultimatum of March 14 was an intensification of the search by Morgan for long-term funds in the United States and Europe and an attempt by the officers in charge at Oakville to curtail Atlantic's lending still further. No relief, however, was felt by McFadden in his daily pursuit of short-term money for which he was now almost wholly dependent upon Canadian sources and lenders of which like S.F.C.I. were proving a godsend in a situation where American short-term funds had fallen to about 23% of the total outstanding on the previous March 15. This date had a special significance, as had all the quarterly dates corresponding to it, for borrowers of these funds from sources in the United States, because it was on these days that American lenders had to make their periodic payments to the United States revenue authorities and consequently a disproportionately high number of maturities then occurred. The rising disinclination of American lenders to "roll over" or renew their short-term loans at maturity because of the presidential "guide-lines", coupled with their requirement of liquidity on tax dates, made June 15, 1965 a day of crisis. It will be appreciated then that on Wednesday, June 9, the day for arranging short-term loans over the following week-end, Atlantic was relying heavily on the expected accommodation from S.F.C.I. Although the general practice was to conclude these accommodations for week-end loans before noon on Wednesday, Atlantic was still in the market at noon and was prepared to take all of the funds available at almost any conventional rate.

Royal Securities as Agent for S.F.C.I.

Since December of the previous year S.F.C.I.'s agent in the placing of short-term loans with Atlantic had been Royal Securities Corporation. The word "agent" is used advisedly because at the time of writing the Supreme Court of Ontario has declared this to have been the case, contrary to the contentions made *ex post facto* by Royal Securities. In *Royal Securities Corporation Limited v. Montreal Trust Company et al*¹ an action begun on July 20, the Chief Justice of the High Court, the Honourable G. A. Gale, giving judgment in October 1966 lucidly describes the position of Royal Securities in the transaction in the following words:

"At this point it is important to note the reason for Royal's complicity in these loan transactions between S.F.C.I. and Atlantic. S.F.C.I. had no office in Toronto and Atlantic had no office in Montreal. Under these circumstances, it was virtually impossible for S.F.C.I. to transfer monies from Montreal to Toronto on a Friday and for Atlantic to transfer monies from Toronto to Montreal on the following Monday. And even if that had been possible, the cost would have made the whole transaction unprofitable.

Royal, however, had offices in both Montreal and Toronto, with banking facilities at each location. Thus, once Royal had been put in funds in Montreal, it was a simple matter for the Toronto office of Royal to draw a cheque on the Montreal branch of its banker and to deposit that cheque in the Toronto branch of its banker. Royal in Montreal could receive funds from S.F.C.I. early on a Friday, deposit those funds in its Montreal bank, and advise its Toronto office that funds were available. Toronto could then draw a cheque on the Montreal branch of its banker, deposit that cheque in the Toronto branch of its banker and draw cheques thereon payable to Atlantic in Toronto a short time later that same day. A similar procedure would be available on the following Monday for transferring funds paid by Atlantic in Toronto, from Toronto to Montreal, making it possible for Royal to repay S.F.C.I. in Montreal.

The most important of these transactions, for the purposes of this action, began taking shape on Wednesday, June 9, 1965. Rayside (*assistant money market trader for Royal Securities in Montreal*) testified that prior to noon of that day, he conversed with Simard in the Toronto office by telephone. Simard advised Rayside of the names of potential borrowers for that week-end and of the rates they were prepared to pay. Included among these names was Atlantic. Rayside then called the offices of S.F.C.I. and spoke with Mr. John Carroll who had just joined S.F.C.I. on June 1, 1965, after some years with other financial houses. In testifying as to this conversation, Rayside could not be certain that he informed Carroll of potential borrowers other than Atlantic. The reason advanced by Rayside was that he would likely not

¹(1967) 1 O.R. 137. The text quoted is, however, that released by the Chief Justice and not as subsequently published with editorial changes in the Ontario Reports.

advise Carroll of borrowers who were willing to pay a rate of interest which he, Rayside, knew S.F.C.I. would not accept. Rayside also stated that at the time of this conversation, approximately 12.15 p.m., Atlantic was probably the only borrower still looking for week-end money, it being normal for week-end borrowers to have completed their transactions by the noon hour of that day.

In any event, Rayside informed Carroll that Atlantic was in the market for week-end funds. Carroll replied that S.F.C.I. would consider lending Atlantic up to five million dollars at four and three-quarters per cent per annum for the coming week-end and agreed to be 'firm' on that proposal for ten minutes. As I understand it, this meant that the offer would be open for ten minutes. Rayside then called Simard in Toronto but was told that Simard had left for lunch. He then called Atlantic directly and was advised by an official of that company that it would pay four and three-quarters per cent interest if the loan were for six days, otherwise its maximum rate was four and five-eighths per cent. Leaving the line to Atlantic open, Rayside contacted Carroll at S.F.C.I. and advised him of Atlantic's proposal. Carroll then requested Rayside to proceed with a loan of five million dollars to Atlantic, at four and five-eighths per cent, for the week-end only, and Rayside confirmed this acceptance with Atlantic on the other line, asking them to prepare the necessary promissory note and to have it registered in the name of S.F.C.I. Finally, Rayside confirmed all matters with Carroll and wrote up his work sheet.

The preliminaries of the transaction were thus completed and it remained then to consummate the agreement. I might add, at this point, that there was little said in any of the conversations concerning the amount of money to be borrowed by Atlantic. Apart from Carroll's suggestion that S.F.C.I. would be prepared to lend up to five million dollars, it seems to have been taken for granted that Atlantic would take the maximum available. This is consistent with much of the evidence which indicated that Atlantic was in considerable need of funds at that time and for this reason was paying a higher rate of interest than other similar borrowers. I was told by Simard that on the morning of Wednesday, June 9, 1965, when he called Atlantic to determine whether or not it would be seeking week-end funds, he was told by a Mr. McGowan of Atlantic, 'Yes, we'll take all we can get'."

The italicized words in brackets do not occur in the Chief Justice's judgment at this point and are inserted. It may be noted parenthetically that Royal Securities some time before December 1964 had refused to participate any further as fiscal agent for Atlantic in the sale of its securities to the public.²

Upon receipt of the \$5,000,000 from S.F.C.I., Atlantic brought its demand loan position at the Toronto-Dominion Bank, already reduced by deposit of the 120-day \$4,000,000 loan, down to the \$1,250,000 minimum liability required under the trust deed by payment of \$3,000,-

²Evidence of D. Davidson, Volume 79.

000. The balance of \$2,000,000 was, in turn, invested with Dominion Securities Corporation over the same week-end, the bank's \$4,000,000 not being repayable before the expiry of its 120-day term. On Monday, June 14, the situation was this: Atlantic was faced with maturities of \$7,400,000 that day, including S.F.C.I.'s \$5,000,000 and excluding interest, to meet which was the \$2,000,000 returning from Dominion Securities and \$900,000 representing the proceeds of additional notes sold, leaving a balance to be found on the day's operations of \$4,500,000. McFadden, providing for an additional \$500,000 to allow for possible overdrawn by the company's one hundred and thirty branches across Canada, informed the bank shortly after 11 a.m. that he would need \$5,000,000 to transact the day's business. Williams, the supervisor in charge of Atlantic's affairs in the bank, asked McFadden to keep him advised as to the amount of new short-term money obtained during the day and the latter turned to the detail of repaying S.F.C.I. Although the normal procedure was for Atlantic to deliver cheques to lenders between 2.00 p.m. and 3.00 p.m., the arrangement with Royal Securities in the handling of S.F.C.I. loans was for the latter to ask for its cheque at about 11.00 a.m., to be picked up by its own messenger shortly after noon. As a result, on this occasion the matured note which the messenger delivered thus early to Atlantic's office was taken over to that of the Montreal Trust Company between 2.00 and 2.30 p.m., when Atlantic's messenger in the normal course presented the new notes for the day for authentication by the trustee. Had it not been for this unusual arrangement, apparently customary in the case of Royal Securities' handling of S.F.C.I.'s loans to Atlantic, Atlantic's note, which was then cancelled by perforation, could not have been so treated until the following day. While this routine business was being transacted at the trustee's office Williams called McFadden to enquire about success in obtaining additional funds. He expressed concern when McFadden told him that there were none, said that he was in search of the assistant general manager to obtain approval for the required advance, and, according to McFadden, told him to deliver up a cheque to Royal Securities for S.F.C.I.; whereupon McFadden replied that this had been done at noon.

It is useful to return here to the authoritative account given by Chief Justice Gale:

"On Monday, June 14, a messenger from Royal in Toronto attended at the Toronto office of Atlantic with the promissory note for five million dollars. In return for the promissory note, he was given Atlantic's uncertified cheque for \$5,001,900.69, being the amount of the loan plus interest. The witness, Maurice P. Henderson, who was the Assistant Office Manager for Royal in Toronto, testified that the messenger arrived back at the Royal office around noon with the cheque. He stated further that no instructions had been given to the messenger to insist that Atlantic's cheque be certified, and he was not instructed to attend at

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Atlantic's bank to have the cheque certified. Henderson then instructed George Cosgrove, who was the cage clerk for Royal in Toronto, to deposit the cheque and to advise the Montreal office when it had been deposited. Cosgrove testified that he called Edward T. Hollingsworth in Montreal, advising him that the cheque had been received, and that once it had been deposited, he would send a wire to him, Hollingsworth, describing the cash position and the exact time when a draw could be made in Montreal. Exhibit 30 was the Telex message which was received in Montreal at 2.00 p.m. and it read as follows:

'I TO TOR TO VAN
BRDA 8½ 7¾ BID 25
TOR x
TOR TO TED MTL JUNE 14 100
CASH SURPLUS TODAY 5500M. YOU MAY DRAW AT 2.00
P.M. BNC TOR'

Cosgrove explained that the reason for the delay in depositing the cheque was that he was unable to obtain the services of a messenger at an earlier time.

Once Hollingsworth received the Telex message, he immediately drew a cheque on the Toronto branch of Royal's banker intending to have this cheque deposited with its Montreal banker. The total amount of the cheque was five and one half million dollars, the excess being required to meet obligations with respect to another transaction. Hollingsworth then prepared a cheque drawn on Royal's bank in Montreal, in favour of S.F.C.I., in the amount of \$5,001,900.69. This, of course, was the exact amount of the cheque given by Atlantic in Toronto in return for the promissory note.

A messenger was then instructed to deliver this cheque (Exhibit 38) to the offices of S.F.C.I. and to deposit their draw on its Toronto branch, in order to cover the amount of Exhibit 38. Both of these operations were duly performed."

One may observe in passing that the Chief Justice was not apparently given the same explanation as to departure from the normal practice in providing payment for maturing notes as McFadden offered to the Commission but, other than the fact that an exchange of cheque and note occurred earlier in the day than usual in Atlantic's dealings with S.F.C.I. through Royal Securities as a matter of practice, no other explanation has been forthcoming.

The Dishonoured Cheque

At ten minutes to five on Monday afternoon McFadden received a telephone message from the Toronto-Dominion Bank saying that Atlantic's cheque to Royal Securities had been returned. He spent the next hour trying to reach C. P. Morgan and eventually did by telephone in New York at 6.00 p.m. Morgan said that he would take the next aeroplane to Toronto. McFadden then called Atlantic's solicitors,

Messrs. Osler, Hoskin & Harcourt, advising them of the return of the cheque and expressing the view that this constituted default under the terms of the trust deed.

Early on Tuesday, June 15, there was, as one might expect, a meeting at the offices of the Montreal Trust Company attended by Morgan and McFadden with the company's solicitors and officers of the trust company, now faced as trustee with the dire discretionary decision as to whether all Atlantic senior and subordinated debt should become immediately due and payable, to give anxious consideration to the next step. To illustrate the company's dilemma and that of the Toronto-Dominion Bank there are quoted below excerpts from the evidence given by McFadden and A. E. Woods in answer to questions put by counsel to the Commission, Mr. A. E. Shepherd, Q.C., which can hardly be improved upon by any digested narrative. They were examined on March 8, 1966. First, McFadden:¹

"MR. SHEPHERD:

Q. Before dealing with the events of this day, did you deposit your \$2,900,000?

A. Yes, sir.

Q. And had you written cheques to a number of noteholders other than Royal Securities or S.F.C.I.?

A. Yes, there was a total of about \$7,400,000.

Q. Of which \$5,000,000 was S.F.C.I.?

A. Yes.

Q. As soon as you deposited \$2,900,000, do I take it that there were funds in the account to meet the other cheques which were coming in?

A. That is correct.

Q. And were they paid in the ordinary course?

A. I believe they were all paid but one small one of \$10,000.

Q. But the S.F.C.I. cheque was for \$5,000,000, and there were not funds in the account to meet that cheque?

A. Correct.

Q. If the bank had agreed to meet the S.F.C.I. cheques, would the effect have been that you would have owed the bank about \$10,250,000 on that day?

A. That is correct.

Q. And the maturities were coming in on the next day?

A. I thought the figure was around \$8,000,000. I believe it was six, somewhere between six and eight million dollars maturities on the 15th.

¹Evidence Volume 6, pp. 635-40.

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Q. The documents already admitted in evidence refer only to short term notes, don't they?

A. That is correct.

Q. Of course, there may have been medium term notes falling due as well?

A. Yes, sir.

Q. So there was something between six and eight million dollars that was going to fall in the next day?

A. Right.

Q. Was any portion of that American funds?

A. Yes, I believe three to four million dollars.

Q. Did you have any assurance that those funds would simply be loaned back to you again on that day?

A. No, I didn't.

Q. So, if that money came due the next day and were not renewed, then you would owe the bank something in the order of seventeen to eighteen million dollars, less whatever new moneys you would have been able to get in on the day following?

A. That is correct.

Q. Is normally an effort made to prevent notes in aggregate sums such as these from falling in on one day?

A. Yes, it is ideal to have maturities strung out on an equal basis, if possible, so you are not faced with large sums on any given day.

Q. What steps had you taken to prevent from occurring precisely that which occurred, of very large sums falling in on two days, one after the other?

A. I had endeavoured to place the maturities equally, but because of our demand for funds we were basically in a position where we had to take all funds that were offered to us, regardless of maturity.

Q. Is it fair to say the company needed money very much and was in no position to bargain, so far as maturities are concerned?

A. That is correct.

Q. You took what was offered?

A. Right.

Q. What happened on the next day, the 15th of June?

A. There was a meeting held at the Montreal Trust Company. I believe—I can't recall who was there from the company, but myself and Mr. Morgan and our company lawyer, Montreal Trust Company. There was discussion on what could be done to overcome this technical default. I wasn't at the meeting for the whole period of time. I had to go back to the office and advise dealers on the remaining notes that were maturing on the 15th.

Q. Apart from the ten and a quarter million you would have needed on the 14th from the bank sums ranging up towards \$8,000,000, depending on the availability of money the next day. Was there any other money you felt would fall due on that next day, as a result of the default on the Royal note?

A. As a result of the default, yes, I would say there was eight to ten million dollars in demand, that once the investment dealers were aware we were in default, they could demand on those funds. In fact, I believe the trust deed automatically makes all notes, regardless of maturity, demand instruments once a default occurs.

Q. But the funds, I take it, which would have been required to repair the damage on the 15th, so that default was cured, would be the \$10,000,000-odd which you needed on the 14th, and sums ranging up towards \$7,000,000 due on the 15th, and probably all the money which was out and payable on demand, according to the tenor of the note?

A. I would say at least \$25,000,000 would be required on the Tuesday.

Q. To keep it alive, Atlantic would have had to be able to raise about \$25,000,000 on Tuesday?

A. Right.

Q. How many investment dealers did you have to phone?

A. I believe that we had outstanding maturities with about ten dealers.

Q. You were calling them for what purpose?

A. To advise the notes, which they were agents on, maturing that day were not going to be paid. I called two or three and it wasn't necessary to call the remainder.

Q. For the record, why was it not necessary to call the remainder?

A. They have inter-phones to each other, and it was a matter of flicking a key and everybody knew after the first two or three phone calls.

Q. The word leaked out, I take it?

A. Yes, sir."

Then Woods,² dealing with the same events, also provided information as to banking practice which explains the decisive part played by the final transaction of Atlantic with S.F.C.I.:

"Q. Were you present on the 14th of June when Mr. McFadden has described the events which occurred?

A. No, I wasn't, sir, but I am familiar with the events.

Q. You have informed yourself as to the matters which caused the bank to take the action which it did?

A. Yes, sir.

²Evidence Volume 6, pp. 699-704.

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Q. Why did the bank refuse to honour the \$5 million cheque, taking the loan to \$10,250,000?

A. Well, ten million would be much too high and, on top of that, there was approximately six million nine (hundred thousand) to fall in the next day in street money and two million the following day. In all we would have been looking at probably 19 or 20 million dollars by the 17th or something like that.

Q. You did have that information available to you, I take it, because you have received the lists of maturities?

A. That is right.

Q. So, do you say the situation was that the bank knew the following day approximately \$7 million was going to fall due?

A. Yes, sir.

Q. And the day after that something in excess of another \$2 million was going to fall due so the bank, by the 16th, would be owed between 19 and 20 millions, less any amount which the company had been able to raise on the street in the meantime?

A. Yes, sir.

Q. Was there any indication or any assurance that any of the debts due on the 15th of June were going to be rolled over, I believe is the phrase?

A. I don't think you could ever have any assurance to that effect."

* * *

"Q. Evidence has been given this morning, Mr. Woods, that the company deposited on the 14th of June \$2 million plus some interest from Dominion Securities and other amounts totalling approximately \$400,000. Do these ledger cards suggest a deposit in that aggregate amount was, in fact, made?

A. On what date?

Q. On the 14th of June.

A. \$2,010,000.

Q. In one cheque?

A. Yes.

Q. And there are certain other cheques, as well?

A. That is right.

Q. Totalling approximately \$2,400,000 in round figures, would it be?

A. That is correct, sir.

Q. Leaving the bank with a credit balance of \$1,984,300.11 at the moment that the deposit was made. Is that correct?

A. Yes, sir.

Q. What did the bank do with that money?

A. Well, continued to pay cheques that were presented to them.

Q. Is it fair to say, and does it appear on these cards, that the bank paid every cheque presented to it on the 14th and 15th of June for which it had funds on hand?

A. Yes, sir.

Q. And at the end of the day, on the 15th of June, there was remaining a balance of \$40,342.61?

A. Yes, sir.

Q. Did the bank seek to take any of the funds that were in the account of the company and apply them against the indebtedness of the company to the bank?

A. No, sir.

Q. How much is owing to the bank now in respect to the notes?

A. Four million U.S. dollars and one million 250 thousand Canadian dollars.

Q. One last question, Mr. Woods. I would just like to understand banking practice. If you have a sum of money at credit for a client in the bank and someone arrives with a cheque which he presents which is over the amount, larger than the amount then at credit, that cheque may be refused. Is that correct?

A. Yes, sir, that is correct.

Q. But it may be that even later on someone else will come with a smaller cheque and that cheque is within the amounts of money at credit, so that cheque is paid, is that correct?

A. That is right."

The apparent discrepancy between the amount of the deposit of \$2,900,000 referred to by McFadden and the \$2,400,000, approximately, deposited on June 14 referred to by Woods is explained thus. \$5,900,000 was deposited on June 11, being the Friday before the week-end, of which \$3,000,000 was used to reduce the liability to the bank and \$2,000,000 was invested with Dominion Securities Corporation. The \$2,400,000 referred to by Woods represents the recovery of \$2,000,000 plus interest from Dominion Securities and the proceeds of additional notes issued on June 14, the Monday following the week-end.³

Action by the Trustee

The dilemma of the trustee was no less acute. It was described to the Commission by James Gordon Haxton, vice-president of the Montreal Trust Company,¹ who was out of the country on vacation during the week in question but was fully possessed of the detailed accounts given to him by his subordinates. In the course of discussion on

³Exhibit 604.

¹Evidence Volume 7.

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the Tuesday morning Morgan told the officers of the trust company that he would require at least \$25,000,000 to meet the maturities already accumulating and to be expected by the end of the following day. He reviewed his own efforts to raise additional funds all of which had proved either abortive or insufficiently firm to meet Atlantic's immediate requirements. In the afternoon the trust company officers met with their own solicitors to consider the courses open to them under the various trust indentures. Default having occurred, and no remedy which would have enabled the trustee to consider it purely technical or inadvertent being anywhere in sight, there was no alternative to declaring all the principal and interest due on all the notes secured by the trust indentures immediately payable on demand, the procedure which alone gave the trustee power to act on behalf of the noteholders. Upon failure to comply with the demand for payment by the borrower the trustee could take possession of the pledged security and either sell it, or apply to the court to be appointed receiver, or generally take any action to enforce payment of the borrower's obligations. On Wednesday a second meeting was held with the representatives of Atlantic at which Morgan urged operation of the company's affairs by the trustee as mortgagee in possession, and as a last resort the trust company officials met with those of Atlantic's bankers, the Toronto-Dominion Bank, the Royal Bank of Canada and the Bank of Nova Scotia to explore every possibility of restoring liquidity to its affairs. Here they were confronted not only with refusal to provide further credit but with the fact that all Atlantic's bank accounts had been immobilized, and the process of issuing cheques and making deposits, more than ordinarily vital in the case of a finance company, was at a standstill because of the threat of seizure. This conviction of Atlantic's bankers that they could not extend their facilities to a company which was manifestly insolvent also convinced the Montreal Trust Company that receivership was the only course open. Accordingly a formal demand was made for payment of the principal and interest of the notes and the company formally expressed its inability to do so.²

Receivership

The sensation was immediate and immense. Although Royal Securities, obsessed with the difficulties of its own position and the desirability of presenting Atlantic's cheque again to the Toronto-Dominion Bank or of reinstating the note, did not inform S.F.C.I. of the fact that it had been dishonoured until June 18, the Toronto press announced the default on the 16th. The common shares of Atlantic Acceptance, the price of which had broken sharply on the 15th downward from a level of \$20.00 current the week before, closed at \$7.25 a share at the close of business on the Toronto Stock Exchange on June 16, a day which saw

²Exhibits 781-3.

59,200 shares change hands. After considerable activity thereafter on account of the uncertainty surrounding the company's future, trading was suspended on this exchange on July 13, at which time the price of common shares had fallen to \$1.65, dragging that of the two preferred issues down with it into insignificance. On June 17, the Montreal Trust Company, as trustee under the various trust indentures securing the senior, subordinate, and junior subordinated notes of Atlantic, informed their holders that the company's failure to make payment on certain senior notes maturing on June 14 and 15 constituted an event of default under the trust deed of 1962, and on the same day applied for and was granted by the Supreme Court an order appointing it receiver and manager of the company's undertaking, property and assets. Earlier on the same day, indeed at nine o'clock in the morning, Atlantic's board of directors held their first meeting since June 9, when plans had been made to issue additional common shares, and at the annual meeting of shareholders held on that date the twelfth annual report had been presented with the auditors' report for the year ending December 31, 1964 showing new levels of prosperity in the company's affairs.

At this meeting the following directors of Atlantic were present: C. Powell Morgan, the president of the company; Alan T. Christie, president of Great Northern Capital Corporation Limited, which was the owner of 53.3% of Atlantic's common stock, and who was himself a partner of Lambert & Company, a Wall Street firm of investment bankers who in turn controlled Great Northern Capital; J. Aubrey Medland, president of Culverhouse Canning Company Limited, and vice-president of Atlantic; Paul C. Sheeline, a New York City lawyer and another Lambert partner representing the Great Northern Capital interest; Jacques Kayaloff, the most recently appointed director, and also representing Great Northern Capital; and William H. Wallace, a retired pharmacist from Montreal and one of the founders of the pharmaceutical business known as Ayerst, McKenna & Company. Christie had heard of the default on the Monday of its occurrence by a telephone call from Morgan to his house in Scarsdale, N.Y., before the former had left to return to Toronto, Wallace from a friend in Montreal who had called him inquiring about the disturbance in the price of Atlantic shares, Medland from a broker on the Tuesday as soon as the investment dealers had been advised. Absent from the meeting was Walter H. Martin, a professional engineer and manufacturer from Hamilton who was on holiday in the French River district and who subsequently learned the news from a three day old newspaper when he came out of the bush for provisions, and Wilfrid P. Gregory, Q.C., president of British Mortgage & Trust Company who emphasized his absence by sending in his resignation from the board. The minutes of this

meeting are meagre,¹ being confined to a resolution accepting Mr. Gregory's resignation and one of a declaratory nature to the effect that the company's bankers would not honour its outstanding cheques, and it is necessary to examine the evidence of the directors themselves, particularly that of Medland² and Christie,³ to recapture its atmosphere and the nature of its business. Beginning early, it lasted, other than for a lunch-time adjournment, throughout the day.

The explanation given by Morgan, and accepted without question at this stage by the other directors, was that the company's difficulties resulted from the shortage of short-term money, especially from sources in the United States, and indeed in the course of the week Morgan issued statements to the press indicating that although Atlantic was technically in default there were ample assets to take care of all the company's obligations in due course. Two unusual notes were struck. The first was Morgan's anger over suggestions being made by an American journalist that the collapse of Atlantic was connected with the appearance on June 14 of forty-one orders to New York brokers accompanied by forged cheques, apparently certified by the Royal Bank of Canada, drawn by Sassoon's Far Eastern Trust Limited of Nassau in the Bahamas, a name which was suggestive of the E. D. Sassoon Banking Company Limited, a well-known firm in those islands. Since the spurious cheques purported to represent payment for nearly \$6,000,000 worth of securities a considerable stir was the result, and particularly since, among orders for established American issues such as those of General Motors, American Telephone & Telegraph, and Texas Gulf Corporation, were mingled orders for the purchase of shares in three Canadian companies, Jockey Club Limited, Commodore Business Machines (Canada) Limited and Racan Photo-Copy Corporation Limited; the last two, especially Commodore, being known to have close connections with Atlantic and its officers, there was speculation that this attempt at a fraudulent coup was connected with the Atlantic default. Morgan played to his colleagues a recording of a telephone conversation between the New York journalist and himself in which this suggestion had been made by the former and which he resented with unaccustomed vehemence. As will be seen later when this remarkable occurrence is examined in detail its true nature was quickly apprehended, and only a very small proportion of the orders were filled by the brokers concerned. Nor did it apparently have any connection with, or effect on Atlantic's failure to meet its obligations on the same day, but Morgan was convinced that the notoriety connected with it had adversely affected his ability to raise funds in New York at that time, and this effect had been deliberately planned by the authors of the swindle. He had, however, recovered his poise when

¹Exhibit 26.

²Evidence Volume 92.

³Evidence Volume 91.

there unexpectedly appeared representatives of the General Acceptance Corporation, a large American finance company, accompanied by their local solicitors, to discuss with the board the possibility of buying Atlantic or buying its accounts receivable, and he impressed everyone at the meeting with his ability to answer the searching questions put to him without hesitation and in full. During the day Messrs. Christie, Medland and Kayaloff paid a visit to the head offices of the Toronto-Dominion Bank, apparently more as a visit of ceremony than for any specific purpose, and were there informed by Mr. Lawrence that he knew of nothing wrong with Atlantic's loans.

So little was it suspected that anything was seriously amiss that both Great Northern Capital Corporation and J. A. Medland bought Atlantic stock at about \$6.50 a share, but on the immediately succeeding days the company's affairs began to wear a more serious aspect. Christie, Medland, Sheeline and Kayaloff attended an early morning meeting on June 18 with officers of the Montreal Trust Company. From there Medland and Sheeline went to see Morgan at 100 Adelaide Street West and received their first intimation of the crucial position of the Adelaide Street subsidiaries, Commodore Sales Acceptance, Commodore Factors and Adelaide Acceptance, the receivables of which had since the end of Atlantic's fiscal year at December 31, 1964 risen by some \$20,000,000 to \$51,-413,876. As the three men went over the individual loans one by one Medland and Sheeline became more and more concerned and Morgan's composure eventually deserted him. He pointed out to Medland after Sheeline had left for lunch that his hands were shaking and that he had to see a doctor. Finally he said, "If they get into those files out there of Commodore Sales all hell will break loose," and he asked Medland not to mention this state of affairs to the other directors. Medland declined the suggestion and, after calling Sheeline back to the meeting, continued the examination until Morgan eventually said, "I take the entire responsibility for this mess."

In the meantime the Montreal Trust Company lost no time in exercising its new powers. It had the immediate problem of continuing the business operations of Atlantic to the fullest extent possible, and provision had to be made at once for releasing the company's bank accounts and restoring the normal flow of sales finance and small loans business with a staff which badly needed reassurance as to status and tenure. The company's auditors, Deloitte, Plender, Haskins & Sells, were asked to make an immediate inspection of all the accounts receivable of the companies for whose audit they had been responsible at the end of the previous fiscal year, and Clarkson, Gordon & Co. were engaged to examine those of the subsidiary companies which had not been audited by Deloitte. It was not long before the situation of Commodore Sales Acceptance, Commodore Factors and Adelaide Acceptance was at least

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in outline disclosed. In the receiver and manager's first report, produced with remarkable dispatch on August 18,⁴ it was announced that a prudent reserve for losses for the \$51,400,000 receivables of these three companies would be in the order of \$34,000,000, a staggering revelation even after two months of steadily deepening foreboding. When the nature and scope of the loss, although only in outline, were revealed to Atlantic's directors in the week following default, they immediately arranged to secure the resignation of C. P. Morgan. This was dated June 17. Morgan however remained on the scene. He was employed temporarily by the receiver and manager to assist the Clarkson Company Limited which had been retained by the former to bring the accounts of the Adelaide Street group of companies under control. He appeared at at least one of the meetings of the Atlantic noteholders to furnish explanations, and he was heard to say privately that it had been a mistake to demand his resignation since, given time, he could have "pulled the company through". He stayed in Toronto until his death in October of the following year.

Public Anxiety and Government Action

By the end of June it had become clear that the failure of Atlantic Acceptance was having wide repercussions, particularly upon public confidence in other finance companies in Canada. A detailed account of what these effects were in relation to the money market and the ability of Canadian finance companies to borrow therein can be found in Chapter XIX, and it is sufficient to say here that by the end of the month an alert and well-informed press had rejected the earlier supposition of a temporary shortage of funds due to American fiscal policy, and had begun to examine the financial structure and relationships of Atlantic itself with a critical and disapproving eye. Early in July it became apparent that British Mortgage & Trust Company of Stratford, Ontario, one of the oldest and formerly most conservative of the smaller trust companies in Canada, was in serious difficulty as a result of its holdings of Atlantic securities. The company's stock, which had been quoted at over \$30 a share earlier in the year, fell from a price of \$26 a share prevailing on July 8 to a bid of \$8 a share on July 9. The president and managing director, Mr. Wilfrid P. Gregory, Q.C. formerly a director of Atlantic and of Commodore Business Machines (Canada) Limited, in the midst of negotiating for a substantial capital investment in the trust company by Denison Mines Limited, made a reassuring statement as to the essential strength of his company and referred to "vicious rumours" circulating about its stability. Public attention was nevertheless directed by the press to British Mortgage & Trust with increasing frequency and, because of the deposit-taking

⁴Exhibit 786.

functions of trust companies, a note of alarm was struck and began to intensify. In view of the extent of its holdings of Atlantic paper, which Gregory repeatedly described as small, considerable bewilderment developed as to the serious effect of Atlantic's default on an established trust company eighty-eight years old. Two things became apparent; first, that British Mortgage & Trust had, like Atlantic, in recent years expanded very considerably in terms of its former size and activity, and second, that the little-understood word "liquidity" was the real key to stability in even the briefest period of loss of confidence by the public. Gregory reluctantly and under pressure resigned as president and from the board of British Mortgage & Trust Company on July 27 and was succeeded by Harold R. Lawson, president of the National Life Assurance Company, who had been a director since December 1964.

By the end of July 1965 measures had been taken to restore public confidence. The Bank of Canada, as indicated in the report of the governor for 1965, persuaded the chartered banks to make funds available to finance companies on an unprecedented scale to compensate for the drastic reduction of those available from institutional lenders and other sources, both in the United States and Canada, which the collapse of Atlantic Acceptance had caused. The government of Ontario undertook to protect the depositors in British Mortgage & Trust Company up to a limit of \$3,000,000 and thereby brought to an end the mounting series of withdrawals which threatened to close its doors. But for investors in both companies and lenders to Atlantic it was clear that the loss would be very serious. Speculation on the street and in the newspapers culminated in the appearance of the report, above referred to, of the receiver and manager dated August 18. It revealed an estimated realizable value of the assets available to creditors to be short of their claims by \$32,355,920 without taking into account a possible increase of liability depending upon the result of the action, then pending in the courts, by Royal Securities Corporation to reinstate the senior note held by S.F.C.I.. By March 1966, when evidence as to the estimated loss in Atlantic and its subsidiaries was given to the Commission on behalf of the receiver and manager, the loss was estimated, without taking into account potential recoveries from litigation or the expense of receivership, at between fifty and sixty-four millions. Subordinated and junior subordinated note-holders and all the shareholders of Atlantic would suffer total loss, and only the senior noteholders could contemplate recovery of part of the amount of their claims. The shareholders of British Mortgage & Trust by an exchange of shares with Victoria and Grey Trust Company, with which it finally merged in September 1965, received the equivalent of \$2.50 per share.

Steps had been taken by the Attorney-General of Ontario immediately after the Atlantic default to institute an investigation by the Ontario Securities Commission. By the end of July it had become apparent that

an inquiry limited by the jurisdiction of the Securities Act, and by the paramount preoccupations of the Securities Commission over the whole field of securities regulation in Ontario, did not do justice to a situation which had produced the heaviest loss of any financial disaster in Canadian history, and the appointment of a Royal Commission was decided upon.

The Royal Commission in Ontario

On July 30, 1965, I was asked by the Prime Minister of Ontario to accept a commission under the Public Inquiries Act¹ to inquire into the causes and effect of the failure of Atlantic Acceptance Corporation Limited to meet the obligations evidenced by its securities. This I agreed to do, and Mr. Robarts thereupon issued a statement in *inter alia* the following terms:

“There has been a good deal of apprehension among the financial community and the public generally since the Atlantic Acceptance Corporation Limited indicated that it was unable to meet its obligations. When the difficulties of this company were first reported to the Government, the Attorney General ordered that an investigation of its affairs be undertaken by the Ontario Securities Commission under sections 21 and 23 of The Securities Act, *R.S.O. 1960, Chapter 363*, and amendments thereto.

Since the 16th of June the Securities Commission has been carrying out a very active investigation and has made several interim reports which have indicated that a very complicated and widespread investigation will be necessary, as there are many companies involved in trading with Atlantic Acceptance Corporation Limited. Under the terms of The Ontario Securities Act the investigations of the Commission are generally directed to whether any transactions which have taken place are in breach of the Act. Upon examination of the reports which have been received, and after a full discussion with the Attorney General, and the chairman of the Ontario Securities Commission and upon their recommendation, I have concluded that the breadth and extent and the ramifications of the dealings of Atlantic Acceptance Corporation Limited are such that an investigation extending beyond the limits imposed upon the Securities Commission by the statute under which it operates is indicated.

I have, therefore, decided that the public interest will be met by a complete and public investigation of this company, its various transactions and activities and its relationships and business dealings with other companies, both domestic and foreign.

Such an investigation can best be undertaken by a Royal Commission obtaining its power under The Public Inquiries Act, *R.S.O. 1960, Chapter 323* and with full power to summon witnesses, examine books and papers and generally present to the public the full story of this company and its operations in all its details, and to make such recom-

¹R.S.O. 1960, c. 323.

mendations as it may deem fit. It is my intent to appoint a Royal Commission and I have asked the Honourable Mr. Justice Samuel H. S. Hughes of the Supreme Court of Ontario to serve in this capacity and he has agreed. The terms of reference of the Commission will be drawn in detail in consultation with the Commissioner.

It is intended that the exhaustive investigation in which the Ontario Securities Commission is presently engaged will be continued and its results will be made available to the Royal Commission.

The inquiry will have no effect on the agreement already reached on the proposed merger between Victoria and Grey Trust Company and British Mortgage & Trust Company, and it is our hope that the merger will be completed according to the terms of the agreement. The action of the Government in regard to the affairs of British Mortgage & Trust Company has been directed to the protection of the depositors and holders of guaranteed investment certificates through the provision of time in which the transaction can be completed. We are hopeful that our aims in this regard can be achieved.

It will be our intent to ask the Royal Commission to also make recommendations as to what steps might be taken to ensure that the events which have been revealed in connection with Atlantic Acceptance Corporation Limited are not repeated in the future."

On the following Wednesday, August 4, Mr. A. E. Shepherd Q.C., senior partner of the London, Ontario firm of Shepherd, MacKenzie, Plaxton, Little & Jenkins, a former Assistant Crown Attorney for the County of Middlesex and prominently engaged in litigation and the practice of company and commercial law, accepted my invitation to act as counsel to the Commission.

I was fortunate in being able to turn for advice and assistance to the Honourable Mr. Justice Arthur Kelly, who at this time was completing the work of the Royal Commission on Windfall Oils and Mines Limited, which had been constituted almost exactly a year before. Royal Commissions in Ontario have not been so numerous or so protracted as hitherto to warrant the establishment of a staff nucleus, such as exists in Ottawa in the office of the Privy Council, and since the administrative initiative rests with the Commissioner the housekeeping problem has been approached in a variety of ways. Since the Kelly Commission was still in being and had met and solved many problems of liaison with government departments, the problem of the provision and expenditure of funds being not the least important, the opportunity of inheriting its accommodation in a government building and as much as possible of its furniture was well worth the slight delay incurred by waiting for its operations to conclude. Even this was much reduced by the generosity of Mr. Justice Kelly in permitting an assumption by stages of the accommodation and the services of members of his clerical staff, so that by mid-September the Commission, with the assistance and approval of the Department of Public Works, had acquired full use of the premises at

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454 University Avenue in Toronto. This consisted of offices and a room for the public hearings of the Commission which served their purpose well and economically.

The first task of counsel was to inform himself of the extent to which the Securities Commission had proceeded and as to what information was in their hands and in those of the Montreal Trust Company, the Clarkson Company Limited and Clarkson, Gordon & Company, the last, as has been seen, having been especially engaged on examination of the loans of the subsidiary companies situated at 100 Adelaide Street West. Mr. Shepherd produced on August 16 a first report containing a summary of this information and a prescient forecast of the magnitude and complexity of the forthcoming inquiry. As a result it was clear that the Commission would have to launch its own accounting investigation on an extensive scale, notwithstanding the information accumulated and work done by the Clarkson firms for the trustee, the results of which were made freely available. To this end Mr. John A. Orr, F.C.A., a senior partner of the firm of Touche, Ross, Bailey & Smart, chartered accountants, with many offices and affiliations in Canada and around the world, was engaged as auditing and financial adviser to the Commission on August 23, and authorized to employ under the direction of counsel as many members of his own firm and of other firms of chartered accountants as might be necessary to expose the affairs of Atlantic Acceptance, its subsidiaries, British Mortgage & Trust Company and many other companies which had been recipients of Atlantic's funds. In all, the affairs of 282 corporations were examined. In practice this meant the continued employment of Clarkson, Gordon & Company, in addition to Touche, Ross, Bailey & Smart, for many months because of the former's close relationship with the Clarkson Company Limited as liquidator and trustee in bankruptcy acting on behalf of the receiver and manager, and with the affairs of Atlantic's subsidiaries since the time of default.

It was clear also that additional legal assistance would be necessary. Accordingly, in the first week of September, Mr. R. I. Cartwright of the firm of Haines, Thomson (now known as Thomson, Rogers), himself a one-time Assistant Crown Attorney in Toronto, was engaged as assistant counsel to the Commission. Its administrative needs, which threatened to be, and indeed became formidable, were met by the appointment as secretary of Lieutenant-Colonel J. B. Lind, C.D., executive officer of the Ontario Economic Council and previously a staff officer of the Canadian Army, who began his work on September 7, and by that of Captain V. F. Cunningham, C.D., recently retired from the same force, as registrar on November 22, by which time a mass of documentary evidence, deposited pursuant to subpoena at the first public hearing of the Commission on October 12, urgently needed classification and arrangement in preparation for its piece-by-piece introduction into evidence at subsequent sessions.

The preliminary investigative work which confronted counsel and accountants was of such proportions that regular public hearings of the Commission were not contemplated at all in 1965, and in fact did not commence until January 12, 1966. Since that date they have been held on 128 days concluding on the 12th day of September, 1968. The number of volumes of the transcript of evidence taken at the public hearings amounted to 127 consisting of almost 17,000 pages. To these volumes there must be added 204 volumes of transcript of evidence taken under oath in examinations conducted pursuant to the Securities Act² either by officers of the Ontario Securities Commission or by Mr. Cartwright, who was appointed as such for this purpose, 69 volumes of transcript of evidence taken likewise under oath and for the purpose of discovery in bankruptcy proceedings, 18 volumes of evidence taken by officers of the United States Securities and Exchange Commission pursuant to an order authorizing an investigation into the Sassoon's Far Eastern Trust case, 7 volumes of voluntary depositions, 2 volumes of examination for discovery in a civil action, and 2 volumes of proceedings in a criminal trial, making 454 volumes in all. No fewer than 182 witnesses, many on several occasions, testified under oath at the Commission's hearings and 5124 separate exhibits were entered in evidence.³

The introduction of these records of examinations, taken in other proceedings and under other statutes, gave rise to a case stated in the Court of Appeal to determine whether in cases where witnesses had claimed protection against self-incrimination by virtue of the provisions of section 5 of the Canada Evidence Act⁴ and section 9 of the Evidence Act,⁵ they were receivable in evidence before the Royal Commission. The court unanimously decided that they were, in that their use by a commissioner under the Public Inquiries Act did not constitute use against such persons in a civil proceeding or a proceeding under any act of the Legislature. The stated case and the transcript of the oral judgment of the court may be found at Appendix C⁶ to this report, and the argument which gave rise to it is contained in volume 94 of the Commission's evidence.

The services of Mr. J. N. Abell, M.A. (Oxon.), who was highly recommended by both the academic and financial communities in Toronto as being by training and occupation qualified to produce a special study on the effects of the Atlantic failure on the money market, were obtained by negotiations with Wood, Gundy & Company Limited in October. Mr.

²R.S.O. 1960, c. 363.

³Appendices A and B respectively.

⁴R.S.C. 1952, c. 307.

⁵R.S.O. 1960, c. 125.

⁶Exhibit 3875.

Abell was at the time managing director of Wood, Gundy (International) Limited of Toronto and has since become president of Wood, Gundy & Company Incorporated of New York. He began his work on January 4, 1966 and during a period of four months thereafter completed his report to the Commission which appears in Chapter XIX. It was subsequently revised by him and was delivered in its present form on October 26, 1966. It speaks generally from that time when the immediate impact of Atlantic's failure was measurable after more than a year of observation. This comprehensive survey, with its accompanying statistics, will speak for itself and is the source of whatever additional conclusions may have been drawn in my report.

A valuable addition to the investigative staff of the Commission was provided by Chief Constable J. A. Mackey, Chief of Police of Metropolitan Toronto, agreeing to the attachment to it of Detective-Sergeant R. C. McMaster and Detective (now Detective-Sergeant) Charles Angus of the Metropolitan Police, closely followed by the securing on a similar basis of the services of Detective-Sergeant (now Inspector) R. C. Barron, of the Ontario Provincial Police. Detective-Sergeant McMaster, who had been associated with the Windfall inquiry, and who had prime responsibilities in that connection, was succeeded as a Commission investigator by Detective W. A. Smythe, and he in turn by Detective Maurice H. Wilson. In practice the investigation of the Ontario Securities Commission, other than into the affairs of Racan Photo-Copy Corporation Limited, ceased with the constitution of the Royal Commission. C. P. Morgan, who had been examined by the Securities Commission in July, was first questioned by Mr. Shepherd on a voluntary basis, and not under oath, on September 4, 1965.

It has been often said, and can bear repetition, that an inquiry of the type undertaken here is not a trial but rather an inquest for information to enable a commissioner to make his report to the Lieutenant-Governor in Council. All of the evidence taken at public hearings was given under oath. All of it being for the information of the Commissioner, the distinction between examination in chief and cross-examination did not exist. The procedure adopted did not contemplate the putting of questions by counsel for any of the affected parties or witnesses except by leave of the Commissioner, and then generally subject to the limitation that additional questions could be suggested to counsel for the Commission and put by them. This limitation was relaxed only where evidence of criminal or improper conduct had been produced. At the conclusion of the evidence introduced by counsel for the Commission a period was set aside, pursuant to notice, commencing on May 30, 1967, for the reception of evidence which affected parties desired to give. It must, however, be borne in mind that counsel for the Commission, conscious of the fact that the receipt of evidence was largely

public and in the presence of the press, invariably discussed the nature of the questions to be put to witnesses with them beforehand, in private and in the presence of their solicitors or counsel. Thus, it was hoped, there might be maintained, consistent with the need to protect a truthful witness from damage to his reputation, the right of the public to be as fully informed as possible of the proceedings of the Commission and of the nature of the evidence. The possibility of surprise and confusion was accordingly reduced, the maximum of preparation before a witness was examined was ensured, and the considerable expenditure of time involved in putting and answering questions at random, which necessarily accompanies the trial of cases in court, was eliminated.

After the conclusion of the public hearings, which for all practical purposes ended in May of 1967, the Commission was confronted with the problem of regulating the availability and use of the large collection of documents in its custody. I had taken the position, not always prevailing in inquiries of this type, that prosecutions and civil litigation arising out of the evidence given should not wait upon the production of my report which would necessarily require long and anxious preparation. Accordingly, documents, mostly in the form of photostatic copies, were furnished to the Crown and to counsel for the defence in a number of prosecutions and to counsel engaged in urgent civil matters on terms designed to ensure fairness to both sides of any cause. Where the Commission's investigators uncovered evidence of irregularity or impropriety, the pursuit of which would have exceeded its terms of reference, law enforcement agencies and appropriate regulatory authorities were advised.

On March 7, 1966, the fifth occasion on which public hearings had been held, counsel called Mr. Orr to the stand as the first witness to testify at length and other than in the course of identifying items of documentary evidence previously introduced. In his opening statement Mr. Shepherd set out the method of the investigation and the sequence of the evidence which he proposed to adduce in the following terms:

"May it please the Commission. Sir, in company with my learned friend R. I. Cartwright, I propose to begin today calling before you witnesses whose testimony may assist the Commission to report upon the matters raised in the Order-in-Council directing this inquiry to be made.

As this evidence unfolds, sir, it may be that you will conclude that this Commission is called upon to deal with a set of facts which is unique in respect to its complexity and its scope. You have more than once made plain at earlier hearings, sir, that this inquiry is not a trial, but rather an inquest to determine what occurred, to the end that measures may be taken, so far as that is possible, to ensure that a similar failure will not readily occur again.

Accordingly, the procedure which would be adopted at a trial, either criminal or civil, is not entirely appropriate here. Were this a trial,

counsel in my position, sir, would no doubt begin by opening the case, that is, by reciting with some particularity the evidence he believed would be given, and pointing to the significance he considered such evidence to have.

An opening statement of that nature is not, in my respectful view, appropriate to an inquiry such as this, and yet the volume and complexity of the evidence require that at least an indication be now given of the order in which the matters germane to this inquiry will be dealt with; the sequence in which the evidence, in the most general terms, will be called; and the methods which will be adopted in laying that evidence before the Commission.

I give this indication of order, of sequence, and of method, in the belief that it will assist the Commission, and in the hope that it may assist persons who deem themselves particularly affected by this inquiry, and their counsel, in that they may be able the better to assess when matters with which they are more closely concerned are likely to be dealt with.

Given, sir, the very great number of companies involved in the matters being inquired into, the intricacy of the relationship between those companies, and the size of the body of evidence to be heard, it is quite obvious that any one of many orders might have been adopted in presenting that evidence, and doubtless any one of them would be as good as any other. It is, however, in my respectful view, less important what order is adopted than it is that some order be adopted; that it may be announced in advance, and that it thereafter be adhered to as rigidly as circumstances may permit and the Commission shall think proper.

Therefore, subject always to the direction of the Commission as announced from time to time, counsel propose, sir, to adopt this order. First, since you, sir, are called upon to inquire into the collapse of Atlantic Acceptance Corporation Limited, among other matters, evidence will be called first to show what that company was according to its financial records at the time the collapse occurred.

That evidence will comprise, first, the corporate structure of the complex of parent and subsidiaries as at the date of the receiving order which (and evidence will be called to this effect) was 17th June, 1965; next, the assets and liabilities which the company had according to its records on that date; next, how the company grew from its inception to the date of its collapse according to its records, so that it had those assets and liabilities; next, from what sources the parent company had received its money, and then to whom the parent and its subsidiaries did loan this money; and, generally, all other matters relevant to the financial history of Atlantic Acceptance Corporation Limited from its birth to its death, all according to the records of the company.

This evidence, which will be given by one witness, must of necessity be of some length; it must of necessity be somewhat technical in nature; but, as I have said, sir, it will come first because it is intended to disclose to the Commission what the company was, what it is that you are dealing with, what it was when it collapsed, and how it reached that position.

That first matter having been dealt with, sir, it is evident that the collapse into which this Commission is inquiring, among other things, had a proximate cause—the company's default in paying a note, and this event, is, you may consider, the proximate cause of us being met here today. Accordingly, we will deal with that second in the order.

Then, sir, as the result of the collapse of this company, there was a loss to creditors, investors and others. Evidence will be called to determine, in the round and not in detail at this stage, what that aggregate loss is now estimated to be so far as it can be estimated at the present time.

Fourth, having shown what the company was, how it came to be placed in receivership, and approximately what loss might be expected, evidence will then be called respecting major transactions involving large loans or large investments by Atlantic or companies associated with it, and this will be done generally in chronological order with reference to the date on which the transaction concerned started. The point of commencement in time from which that chronological order will extend will be the acquisition of Aurora Leasing Corporation Limited in late 1960 by those who were still numbered among its shareholders in the summer of 1965.

These transactions, sir, will be dealt with one at a time and originally by eliciting the testimony of accountants and others who can produce documents and describe the movements of money. Witnesses who might be expected to have some personal knowledge of the facts will also be called to testify to such specific transaction then under review.

Now, sir, since some witnesses have knowledge of facts involved in more than one transaction, and since in my respectful submission it is imperative, if chaos is to be avoided, that these matters be dealt with one at a time: it may be necessary for some witnesses to attend on several separate occasions, and the whole evidence of such witnesses relevant to every phase of the inquiry will not be obtained on any one appearance, though in sum the whole of their evidence will, of course, be obtained. Neither will every aspect of every company be dealt with in one occasion. Transactions will be dealt with in turn.

Accountants will, subject always to the direction of the Commission, produce documents which appear to be relevant to the matters under review, taken from the files of the Commission. Where such documents have not yet been identified, accountants will, subject always to the Commission's direction, deal with those documents; but I undertake later to call evidence proving the origin of such documents, including evidence as to who wrote a document where it is in handwriting. I give that undertaking now, sir, once and for all.

Some of those more closely concerned with Atlantic and companies associated with it, such as the principal officers, may have knowledge of a great many transactions with which we will deal, and they will not commonly be called repeatedly to testify after each single matter has been dealt with, but they will be called to determine whether they can assist the Commission after the evidence of accountants and others touching such major transactions has been heard, at which time their

evidence will be elicited respecting their entire knowledge of the matters with which this Commission is concerned.

Next in order, sir—and I think it may be fifth—after the major transactions have been dealt with and those apparently more closely concerned with them have been heard, it will be the hope of counsel that the Commission will be informed about how the loss came to be incurred.

We will then turn to the question of whether the published financial information respecting Atlantic prior to its sudden collapse, was correct. To this end evidence will be called to determine whether the audited financial statements for 1963 and 1964 would have been substantially the same as those published if all parts of the corporate complex had been examined, in the light of knowledge then at that time available and applying the tests which it is customary for accountants to apply.

We will further examine, sir, what rules are generally applicable in the profession of accounting, so far as they are relevant to the matters into which this Commission is inquiring, and the degree to which they were observed by all concerned.

Sixth, having determined whether the published financial information was correct, we will then turn to the security which the company gave for the moneys it borrowed from the public. This security, sir, was principally to be found in the deeds of trust, and they require the production and delivery of various reports of the company. Evidence will be called to determine the accuracy of those reports and to determine whether the deed of trust was complied with by anyone who had any obligation under it, and whether any default occurred prior to the collapse.

In furtherance of this aspect of the inquiry and the aspect which I mentioned just previously, all the accountants concerned will be called to testify as well.

We will now, sir, have dealt with what the company was according to its records at the time of the collapse; the proximate cause of it going into receivership; with the estimated loss, causes of the loss; with whether the financial records to which I have referred were correct; with the security afforded by the deed of trust on which borrowers relied.

It is at this point that counsel deem it appropriate, subject always to your direction, to call the directors to testify respecting all that has gone before, so far as they are able to assist the Commission.

Next we will then call evidence to deal more briefly with any smaller matters, if any there be, to which reference has not already been made in the mass of evidence which has gone before—simply mopping up, as it were; and we will deal with trading and share prices and the like.

Then, sir, during the course of the evidence relating to Atlantic, it may be that loans made by British Mortgage & Trust will have required some consideration. This company, however, operated under different laws and regulations peculiarly applicable to trust companies. It is, as I concede, impractical to interrupt the flow of evidence respecting Atlantic by pursuing in detail every British Mortgage & Trust transaction as it first comes to light, and yet these transactions must be examined.

Therefore, the degree to which British Mortgage & Trust is concerned with the matters into which this Commission is inquiring, will be dealt with separately and in this place in the order of evidence, subject always to your direction. This aspect of the inquiry about British Mortgage & Trust will follow in the main the order and sequence I have already set out respecting Atlantic, with the addition of evidence touching the nature of the legislation under which this company operated and its administration."

CHAPTER II

The Early Days

The preceding chapter began the story of Atlantic Acceptance at the end rather than at the beginning. This treatment was not an attempt to employ dramatic effect but to place the origin of this Commission in its proper setting. It is necessary now to turn to the earliest days of the company's existence, some sixteen years ago, to describe the realization of the ambition of one man who was the dominant figure in its affairs until the day of its collapse and whose shadow lies across all that is to be subsequently described and discussed in this report. In the first six years it will be seen that the company's growth owed much to the accidents of his personal friendships, the ready address which seldom failed him and the agility of his ingenious and inventive mind. By 1959 an obscure concern, carrying on a sales finance business of modest proportions and doubtful quality, had been remarkably transformed, and it is with this process that the present chapter deals.

C. P. Morgan

Atlantic Acceptance Corporation Limited was the creation of C. P. Morgan and, since its origin and early years in particular cannot be separated in any intelligible way from his personal activities, some attention must here be given by way of introduction to the details of his life prior to the six years between 1959 and 1965 with which this report is mainly concerned. When he was stricken with acute leukaemia at the end of April, 1966, the Commission had to decide what course to take within the hour. He had not yet been called before it at a public hearing, except to identify some documents, because the logical position for his evidence had not yet been reached. He faced a searching and protracted examination which could not have lasted less than three weeks and might conceivably have taken longer. Except when required by the

court in the Royal Securities case or for examinations in various bankruptcy proceedings, he had been present each day at the sessions of the Commission until the time of his illness. When he became aware of his condition he at once offered to give evidence under such circumstances as his physicians might permit before going into hospital, a confinement from which he had reason to believe he might not emerge alive. The news of this development was given to the Commission by his solicitors, and it forthwith adjourned to take evidence at Morgan's house in Toronto on May 2. The hearing was resumed on the following day and the transcripts of the testimony given under these circumstances may be found in volumes 25 and 26 of the evidence. To explain the problem, and the decision taken, I can do no better than quote what I said in public on the morning of May 3 before adjourning a second time to continue receiving this evidence:¹

"THE COMMISSIONER: Yesterday morning before the hearing commenced, I was advised by counsel for Mr. C. P. Morgan, the former President of Atlantic Acceptance Corporation Limited, that he was seriously, perhaps dangerously ill and urgently required admission to hospital and treatment.

Subsequently I made arrangements to be advised if Mr. Morgan could be examined by the Commission with his physician's consent and under circumstances which, of course, to a very great extent would be settled by his physician's advice. Word was not received as to the possibility of proceeding in this way until the commencement of the proceeding, the public proceedings, of the Commission yesterday and as those persons who were here will remember, an adjournment was effected before any evidence was taken in the normal course.

It was not possible under those circumstances of apparent urgency to make any statement at the time because I was not fully in possession of the facts.

I have had, in consultation with counsel, an opportunity to consider what the public interest is in the situation which has now been disclosed. As all of those who have been present from day to day in this enquiry will realize, Mr. Morgan is a central figure in most of the transactions with which we have had to deal.

I am advised by counsel that he will continue to be a central figure in the transactions about which evidence will be given in coming months.

There were, of course, two alternatives open to me. One was to assume that Mr. Morgan would in due course recover his health and return here to be examined in public. The other was to make the opposite assumption and to decide whether, in the public interest, I could afford to ignore an opportunity of obtaining what evidence might be available now.

I do not want to be heard to say that the interest of interested parties and counsel who have represented them here is divorced from the public interest. Of course it is in the public interest to receive

¹Evidence Volume 26, pp. 3411-4.

evidence, as much as possible, in public and in the presence of counsel for interested parties.

My problem was to decide where the preponderance of public interest lay and I did decide, in consultation with counsel, that it lay in having immediate in camera hearings until such time as Mr. Morgan might secure admission to hospital.

I should say that Mr. Morgan has taken the initiative in offering to give evidence at once before this Commission while he is able to do so and is not affected by sedation incidental to treatment in hospital.

Unfortunately his domestic arrangements do not permit of the introduction of any more than the bare minimum of people into his bedroom and I am forced reluctantly to rule that counsel for other interested parties—that is other than counsel for the Commission and for Mr. Morgan himself—may not be present at these in camera hearings.

The transcript of this evidence will not be made public until such time, if that time does arise—we may be permitted to hope it does not arise—that it becomes apparent that Mr. Morgan may not be able to give evidence in public. If he can, as we all hope he will, return to appear before this Commission and his appearance will, of course, be a protracted one, then the transcripts of the evidence taken now will not be made public.

If he does not return, then at the appropriate time they will be.

Consequently, at this stage I am going to continue to secure from Mr. Morgan, under the circumstances which I have outlined, as much of the very important evidence which he has to give as I can now obtain before he enters hospital.

This hearing then will be adjourned until the same hour tomorrow and we will continue to take Mr. Morgan's evidence, as much as we can, subject to his physician's advice, in the course of this day."

But after this the patient's time ran out and he entered hospital the next day. In due course he was released as a period of remission was secured by drugs and blood transfusions, but he was never thereafter, in his physician's opinion, able to face even the limited tests of endurance which these two days had imposed. Much admiration is due the stoical calm with which Morgan contemplated the doctors' verdict and his determination to submit himself for examination while time remained. Needless to say counsel had formidable difficulties to overcome in that no time was given him to prepare his examination, which necessarily ranged over the whole field of the witness's multitudinous transactions, nor was there at hand the full range of documents which, in the normal course, would have been put to him. Nevertheless, I had on these brief occasions the impression that the only two men who really understood the exceedingly complicated facts at that point were fortunately face-to-face in my presence, and Mr. Shepherd's employment of the time at our disposal may conservatively be judged as a masterpiece of improvisation sustained by all that study and intuition could accomplish.

Under these circumstances, in which the physical weakness of the

witness was a painful and pervasive fact, there was little time for acquiring the "background information" which would normally have emerged at a prolonged public hearing. Morgan died in hospital on October 17, 1966 and the full extent of what he knew, or was prepared to reveal, will never be known. What he did reveal was by no means the whole story, even though he had also been examined twice by the Securities Commission (in re Racan Photo-Copy Corporation Limited and Analogue Controls Incorporated) and in eleven examinations for discovery in bankruptcy proceedings (in the estates of Trans Commercial Acceptance Limited, Evermac Office Equipment Company Limited, Frederick's Department Store Limited, Masco Construction Company Limited, Associated Canadian Holdings Limited, Dallas Holdings Limited, N.G.K. Investments Limited, Cimcony of Canada Limited, Valley Farm and Enterprises Limited, and Dalite Corporation (Canada) Limited). Other inquiries were made to establish, where these were wanting in the transcripts, the particulars of his early history.

Campbell Powell Morgan was born at Peterborough, Ontario, on Christmas Eve 1908. He matriculated at Windsor and thereafter was for a brief period a junior clerk with the Royal Bank of Canada in that city, going from there to the Briggs Manufacturing Company in Detroit as a cost accountant. At this time he studied, according to his own account, for two years at the University of Detroit. From September 1929 to February 1935 he was employed by Brockenshire, Scarff & Co., an accounting firm in Windsor, and there he qualified as a chartered accountant. For a year he was employed in the corporations tax branch of the Provincial Treasurer's Department in Toronto, and spent the period from December 1936 to November 1939 as a senior auditor with the well-known firm of Price, Waterhouse & Co. in the same city. Throughout the war, and specifically from December 1, 1939 to January 27, 1947, he was assistant comptroller of Loblaw Groceries Limited which he left to join the International Silver Company of Canada Limited, at that time in Hamilton and subsequently in Niagara Falls, Ontario, where he remained until late in 1958. In March of 1948 he was made a director of International Silver with the title of secretary, assistant treasurer and comptroller. In April 1949 he was appointed a vice-president, retaining this title until his resignation.²

Incorporation, Directors and Officers

Atlantic Acceptance Corporation Limited was incorporated as a public company by letters patent issued under the Great Seal of Ontario, dated January 28, 1953. Morgan's account of its origin is that, while employed at International Silver, he became concerned about the difficulties encountered by the selling agents of the company who were competing in what he described as "a great wave of door-to-door selling"

²Exhibit 3799 and Commission file: C. P. Morgan.

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at this period, and were beset by demands for more lenient and extended terms of payment by purchasers than they were able to obtain from the manufacturer. He suggested that the company should go into the business of financing these sales on a discount basis, a project which was approved by the Canadian board of directors but rejected by that of the American parent company of Meriden, Connecticut. Morgan was allowed, however, to proceed with the idea of creating a small finance company and Atlantic Acceptance was the result of this permission. In the event it was not used for the purpose originally intended, but began financing the sale of television sets produced under the names of "Coronet" and "Premier" at a time when the demand for any form of television receiver was in the first flush of exuberance.

Light has also been cast upon the early years of Atlantic by the evidence of David Davidson,¹ and J. A. Medland² and Alan T. Christie³ who were directors and Carman G. King.⁴ To avoid the repetition of details of the election and resignation of the various directors at this and later stages of the report a list of their names with dates of election and resignation as at June 17, 1965 appears below.⁵ On June 14, 1955 the number of directors constituting the board was increased from five to seven and on May 18, 1965 from seven to nine.

Campbell Powell Morgan	February 6, 1953	
John Earl Copeland	February 6, 1953	June 9, 1953
John Alfred Daley	February 6, 1953	June 9, 1953
Harry Cowan Whiteside	February 6, 1953	June 9, 1953
David Rainnie Pidgeon	February 6, 1953	June 9, 1953
Thomas Aynor Ratcliffe	June 9, 1953	November 15, 1953
Cecil Warborough Howe	June 9, 1953	May 22, 1954
Carl Tovell Bastedo	June 9, 1953	April 10, 1959
Mrs. Mildred Lucinda Morgan	June 9, 1953	August 20, 1953
Ernest A. Lindley	August 20, 1953	April 10, 1959
Norman F. Firth	May 22, 1954	April 10, 1959
Walter H. Martin	December 1, 1954	
J. Aubrey Medland	June 27, 1955	September 23, 1955
Ramsey A. Evans	June 27, 1955	September 23, 1955
David B. Mansur	September 23, 1955	February 13, 1960
Anthony C. Rooney	September 23, 1955	June 30, 1964
Wilfrid P. Gregory	April 10, 1959	June 17, 1965
J. Aubrey Medland	April 10, 1959	
William H. Wallace	April 10, 1959	
Alan T. Christie	March 17, 1960	
Paul C. Sheeline	June 30, 1964	
Jacques Kayaloff	June 9, 1965	
James E. McConnell	June 9, 1965	

¹Evidence Volume 78.

²Evidence Volume 92.

³Evidence Volume 91.

⁴Evidence Volume 93.

⁵Exhibit 75, as amended.

Morgan was the president of the company throughout, other than for the few days in which the provisional directors held office, until a few days after Atlantic's default. Of the other directors the one with the longest service was Walter H. Martin who was elected on December 1, 1954 and resigned on October 26, 1965. Of the employees who held senior posts only A. McLeish, who finished as vice-president in charge of operations of Atlantic, and David Davidson, the secretary, were concerned with the company in the early days, and McLeish was there when Davidson came to it at the end of 1953. Both Martin and Davidson gave evidence before the Commission but it is to Davidson, who also prepared a lengthy account of his experience with Atlantic for the benefit of the Commission, that it owes much of its knowledge of the early period of the company's development.

David Davidson

David Davidson was born in Scotland in 1906 and, after completing his secondary education and attending evening classes at the Glasgow Atheneum, he emigrated to the United States in 1929, being employed in Chicago by the Peoples Gas Light & Coke Company. Here he did accounting work until 1940, finally being responsible for preparation of financial statements and compliance with the regulations of the United States Securities and Exchange Commission in connection with the issue of securities. While employed by this company he obtained, by attending evening classes at Northwestern University, a diploma in commerce in 1934 and, at the John Marshall Law School, a bachelor-of-laws degree in 1938, thereafter passing the bar examinations of the States of Illinois and Wisconsin. In 1940 he joined the Carnegie Illinois Steel Corporation in Pittsburgh, Pa. as a senior auditor and was there engaged substantially on special accounting in relation to the limitation of profits on war contracts. In 1948 he went to work as an auditor for the Steel Company of Canada in Hamilton, Ontario, becoming responsible for internal legal and taxation work and remaining there until 1953. In either 1949 or 1950 he first met C. P. Morgan at the Roseland Park Country Club in Burlington where they were both members. After he left the Steel Company, and after a brief period of employment with Dominion Tar & Chemical Company Limited in Montreal, he was engaged by Morgan to review the accounts receivable of the infant Atlantic Acceptance Corporation and thereafter became a permanent employee until he was released by the receiver and manager on April 30, 1966. At the end of a year he made his report to Morgan on the state of the company's accounts receivable and it was not favourable, Davidson going so far as to say that in his opinion the company was insolvent if any realistic allowance for losses were made. No doubt as a result of this report on February 15, 1955 he replaced one Clarence

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Gott as general manager and assistant secretary of the company, retaining these positions until late in 1958 when he became in turn secretary-treasurer and secretary alone in 1964. Shortly after his appointment as general manager International Silver moved its offices to Niagara Falls, Ontario, and Morgan's operation of Atlantic was necessarily confined to flying visits, so that Davidson had a fairly free hand.

Problems of Profitability in the First Five Years

The early history of Atlantic Acceptance occupies a well-defined period of time between the commencement of its operations in 1953 to the end of 1958, by which time C. P. Morgan had left the service of the International Silver Company under circumstances which will be referred to later, and had taken over on September 1 of that year the full-time operation of the company as president. It is not proposed to describe its activities in detail in this period, other than to notice those developments which were vital to the growth of the company and the employment of certain techniques which generally appear to be normal to the operation of all finance companies, and which, in at least one instance, did not conform to the usual practice and produced a significant distortion of the company's published financial statements as a result of the personal intervention of its president. The sales finance business is often described, in the current cant phrase, as "a service industry", meaning that it is not productive as to goods but only as to the service of lending money. The simple premise upon which a finance company exists and flourishes is its ability continuously to borrow money and thereafter lend it at a rate which secures to it from year to year an acceptable margin of profit. To be acceptable this must not only produce a reasonable and competitive return on the funds which have been invested in the company by holders of its shares but must be sufficiently impressive to attract additional investment in competition with similar institutions. No doubt a situation could be envisaged where a finance company, having achieved a certain volume of business, could elect to maintain a static position, neither increasing nor reducing the scale of its borrowing and lending, but in practice the most skilful regulation would be required to make it materialize. A moneylender must be prepared to lend money to all comers who are qualified borrowers, particularly in an economic climate such as that of the late 1950's when hothouse growth was not unusual and the demand for money was insistent. Any setback, such as would impair the capital invested in a finance company, might have the effect of thrusting it far back not only in the race for achievement but in the struggle for survival. Its assets are, for all practical purposes, its accounts receivable, or its expectation of repayment with interest of the money it has lent. All these things must be borne in mind when considering the

history of Atlantic and the motives which animated its promoters and particularly its president.

The mechanics of the company's financing, the sources of its funds, the limitations imposed upon its borrowing by the provisions of the trust deeds to which it was a party and its lines of credit with the chartered banks have been exhaustively analysed and commented upon in the evidence given before the Commission and principally by the Commission's auditors. The consolidated balance sheets and income statements of Atlantic and its subsidiaries, prepared from the published financial statements of the company from the year ending June 30, 1954 to the year ending December 31, 1964, appear as Table 1.¹ This, with many other analytical accounting documents, was put into evidence by Mr. Orr on the first occasion when he testified at length on March 7 and 8, 1966.² It shows that from the fiscal year ending June 30, 1954 to that ending December 31, 1958, a period which was effectively covered by Davidson's active management and Morgan's absence in Niagara Falls, growth occurred in accounts receivable from \$1,226,202 to \$3,240,069 and in profits (net income earned) from \$14,700 to \$48,391. At the year-end June 30, 1955, they showed their only decline from the figure of a previous year in the company's history, and this, no doubt, was a result of the almost total involvement in the financing of television sales and Davidson's pessimistic review.

Indeed, according to Davidson, C. P. Morgan's principal concern with the company's affairs at this stage was the production of a financial statement which would reflect a profit of such order as to encourage investment and justify payment of a dividend on the preference shares. Throughout the eleven years in which it published such statements it never failed to show a profit which increased from year to year, rising by the end of 1964 to a figure of \$1,100,004. Both Davidson, from his knowledge of the early years, and McFadden, of the later years, testified that Morgan himself fixed the amount reserved for bad debts mainly as a factor in determining profits and the earnings per share of the issued stock. If Davidson thought that the company was insolvent by virtue of the quality of its receivables in 1954 it will be shown hereafter that it was operating at a loss by the end of 1963, and perhaps earlier, upon any rational basis of making allowances for bad debts according to generally accepted accounting principles. However, let it suffice that Morgan, with no experience of the workings of finance companies, from the beginning asserted his control over this aspect of its affairs.

Another factor in determining the amount of profit recorded year by year must here be noticed. In what are generally referred to as consumer loans, involving the financing of the purchase of a chattel

¹Exhibit 542.

²Evidence Volumes 5-6.

under the terms of a conditional sales agreement, the borrower undertakes to pay a sum which includes not only the principal amount but the interest payable thereon computed over the life of the contract. The portion of this sum representing pre-computed interest is known as the service, or finance charge, and the method by which this is taken into income year by year and the remainder deferred to subsequent years has a particular bearing on the amount of profit that can be shown by any finance company. From the evidence of Davidson and from that of C. P. Morgan³ Atlantic, subject to exceptions and refinements which will be noted hereafter, originally used the sum-of-the-digits method or, as it is sometimes called, the "Rule of 78ths" to calculate the portion of the blended payments to be taken into income over the life of the contract, after deducting 40% of the service charge as the "cost of acquisition" and carrying the remaining 60% in its deferred income account. The sum-of-the-digits computation acquires its sobriquet of "Rule of 78ths" from the fact that the separate numbers taken from 1 to 12, as in the case of a 12-month contract, add up to 78 and in the first month of the contract the proportion of $\frac{12}{78}$ of the revenue deferred is taken into income, followed in the second month by $\frac{11}{78}$, in the third month $\frac{10}{78}$ and so on in descending order. This method is in frequent use but, fortunately for the stability of the finance company business, the practice of deferring only 60% of the service charge is not. It will be readily understood that the immediate taking into income of 40% means either that the cost of acquisition is very high or that the proportion deferred is designedly low, with a view to giving the highest possible stimulus to current earnings. Morgan's adoption of this course of calculating income from contracts where pre-computed interest was a factor created problems involving over-payment of income tax and eventual drastic adjustments when electronic computers were brought to bear on his companies' accounting, and if they had survived to enter a season of reduced expansion they would have suffered a disastrous decline in earnings. Yet the system had decided advantages as a promotional device at a time when the main preoccupation of management appears to have been to attract capital investment in a period of unprecedented expansion and optimism. Coupled with the understatement of allowance for bad debts it produced the illusion of rapid and continuous growth. It must be noted that Davidson's evidence, both on oath before the Commission and in his "historical and financial review" on file therewith, alleged that Morgan had abandoned the sum-of-the-digits calculation for retail accounts when it became apparent that it was not producing sufficiently large profits in a current year. He refers to a running battle between Morgan and the company's auditors for the first ten years of its existence, Wright, Erickson, Lee & Macdonald, who consistently pressed for a more realistic reservation against bad debts

³Exhibit 3799.

and for unearned interest, and who, in the course of an "annual wrangle" with Morgan, were successful only to a very limited extent. John Edward Lee, C.A., the partner in charge of the audit up to and including 1963, testified that the Rule of 78ths was not fully applied until that year except in the case of industrial loans, and that the company simply selected a percentage of the outstanding retail "paper" at the end of each year as an appropriate reserve, using as an excuse that the rule required too much clerical work.⁴ Morgan appeared content to accept an unnecessarily heavy income tax liability provided that the net income after taxes should be sufficiently large to justify payment of dividends and to show a consistent growth in terms of earnings per share, in order to attract new capital and particularly the purchase of long and short-term notes.

Early Financing

The early financing of Atlantic Acceptance was undertaken by the issue of preference and common shares and the obtaining of credit from the Bank of Toronto in Hamilton, with such additional accommodations as will be referred to hereafter. Originally authorized were 20,000 common shares without any nominal or par value and 5,000 preference shares each with a par value of \$20, of which all but 5,000 common shares had been issued by the autumn of 1953 for an aggregate consideration of \$100,000, according to recitals in the by-laws of the company, but for \$111,000 according to the record of share transactions contained in the minutes of meetings of the directors.¹

From an examination of the records referred to and the prospectus dated February 16, 1953 it appears that pursuant to an underwriting agreement dated February 4 between the company and Fleetwood Financial Corporation Limited of Toronto, a company in which the dominant figure was one C. J. Foran, it was provided that Fleetwood would buy 1,100 units consisting of five preference shares and five common shares for \$101 per unit, the company to pay Fleetwood a commission of \$11 per unit, thus securing a net of \$90 per unit for the treasury. Davidson's recollection is that Fleetwood was not particularly successful in its efforts to dispose of these units, and that thereafter Morgan relied on his own efforts and those of Carl T. Bastedo, a salesman in Hamilton for the brokerage firm of A. F. Francis & Co., who became a director of Atlantic on June 9, 1953. In any event the proceeds of the sale to Fleetwood, together with that of 5,005 shares taken up by the directors and 4,995 by G. Warren Armstrong, a Toronto solicitor who incorporated the company, at \$1 each, put an aggregate of \$100,000 in the treasury.

From the beginning Atlantic Acceptance's principal bankers were the Bank of Toronto, to become, by merger in 1955 with the Dominion

⁴Evidence Volume 79.

¹Exhibits 17 and 22.

Bank, the Toronto-Dominion Bank, and, although branch offices and subsidiary companies had accounts with other chartered banks, the Toronto-Dominion Bank was to retain the leading position throughout Atlantic's active life. There credit was obtained by pledging the company's accounts receivable as security with the bank in Hamilton in the proportion of 115% of the amount borrowed against them. The bank required that any accounts which were delinquent for a period of sixty days or more must be withdrawn from deposit and Davidson's evidence² was to the effect that this was done where there was sufficient collateral on deposit to preserve the required ratio, but where this was not the case delinquent accounts were not withdrawn. The bank, he said, conducted only a superficial inspection once or twice a year by sending an assistant manager and a girl to the company's office at 66 King Street West who, apart from determining the unpaid balance as shown on the accounts receivable cards, paid little attention to the degree of delinquency of any particular account, and that, at least in the period of the company's principal activity in Hamilton, no complaints were made against the pledging of delinquent accounts as security, probably because the bank was unaware of their true state. The minutes of a meeting of the board of directors on September 29, 1953 contain an announcement of the bank's intention to increase its line of credit to \$250,000 in the event of the introduction of \$100,000 new capital and, as a result, supplementary letters patent were obtained increasing the common shares by 45,000 to an authorized total of 50,000 with no par value and the preference shares by 10,000 for a total of 15,000 authorized at a par value of \$20. Of these by far the greater part were taken up equally by Morgan and Bastedo, then the company's treasurer, and it must be assumed sold to members of the public. Morgan, on his own showing, retained between 15% and 20% of the company's voting stock throughout this period, and perhaps as much as 25% if Davidson's recollection is to be trusted. By June 14, 1955 the board thought fit to pass a resolution declaring 15,000 preference shares and 50,000 common shares as non-assessable and fully paid for a consideration of \$300,000 and \$30,000 respectively, "the directors acting in good faith."³

Two Chance Encounters: J. A. Medland and C. G. King

Two important transactions in the history of the early financing of Atlantic must now be noticed. They were both fortuitous and one at least was to have momentous consequences. One of Morgan's associates at Price, Waterhouse & Co. was John Aubrey Medland, a graduate of the University of Toronto in Commerce and Finance, a sometime student at Cambridge University, and, of course, a chartered accountant. Morgan

²Evidence Volume 78.

³Exhibit 17.

and Medland left Price, Waterhouse & Co. at about the same time, the former to go to Loblaw Groceries as assistant comptroller and the latter to take over the direction of Culverhouse Canning Company, a family business. From a chance encounter in a Hamilton brokerage office Medland learned from Morgan of his new enterprise and how this had developed from the scheme propounded to the International Silver Company. The date of this meeting is uncertain. Medland in his evidence before the Commission¹ hazarded 1956 or 1957. Counsel put to him that it must have been in 1955, because he became a director of Atlantic for the first time on June 27 of that year, remaining until the annual meeting on September 23 when he was not re-elected. It is more probable that the meeting was in 1954, because the minutes of a meeting of the directors dated May 22 in that year announced Medland's retention as financial adviser to the company at a salary of \$500 per month. In any event, as a result of this conversation and of Morgan telling him that the business was showing signs of success but needed money to tide it over a current difficulty, Medland pledged \$50,000 worth of his own securities with the Bank of Toronto on the strength of which it lent Atlantic an additional \$200,000. Medland's salary was contrived to represent the difference between the bank rate of 5% and a rate of 8% on the money, which Morgan expressed his willingness to pay. If the minute of May 1954 is accurate the rate of 8% is justified by that crisis in the affairs of the infant company which was revealed by Davidson's analysis of the accounts receivable, then some months under way. The election of Medland and Ramsey A. Evans, Q.C., the company's solicitor, on June 27, 1955 occurred at a special meeting of shareholders on that day after it had been resolved to increase the number of directors from five to seven. Medland was not re-elected at the annual meeting of the company held on the following September 23 and, on further examination of the transactions of June 27, it becomes clear that the company's obligation to him was on the point of being discharged.

The second and even more significant encounter also took place at some time in 1954, according to the evidence given by Carman George King, vice-president of the bond-dealing firm of Annett & Co. Limited and the stock-broking firm of Annett Partners Limited, both with headquarters in Toronto. King was also a graduate of the University of Toronto in 1931 in Commerce and Finance, and had been employed by investment firms dealing in bonds up until the time when he joined the Royal Canadian Navy during the last war. On discharge he was a member of the firm of Saunders, King & Co., in the same business in Toronto, until in 1953 this partnership was dissolved, and he joined Gairdner & Co. where he became resident manager of that firm's office in New York. In 1958 he joined D. R. Annett in the business with

¹Evidence Volume 92.

which he is still associated.² It was during King's employment in New York that he first heard of Atlantic Acceptance, and he told the story thus in answer to questions put to him by Mr. Shepherd:³

"Q. Mr. King, you have testified on an earlier occasion respecting your own history in business and the like. Would you inform the Commission under what circumstances you first came to have any connection with Atlantic Acceptance Corporation Limited?

A. Well, I was working in Gairdner & Company in New York and came up to Hamilton on a visit, my mother lived there and I came up to see her, and I was walking down James Street and, I think it would probably be in front of the Piggott Building, I met a fellow by the name of Carl Bastedo.

Q. When would this be?

A. This would be, I believe, in the summer of 1954.

Q. Yes?

A. Carl was a stockbroker and bond dealer in Hamilton with A. F. Francis & Co. and he and I had known each other ever since school days. And we got talking about stocks and bonds and he said they had started a finance company in Hamilton the previous year called Atlantic Acceptance. And in view of the fact we had just financed Laurentide Acceptance in New York successfully with secured notes, and also the fact that we had a lot of customers and brokers in New York that were enthusiastic about finance companies' stocks, I made some enquiries and asked him for the original prospectus and the annual report.

Q. Yes?

A. And I took it back to New York and found out that there was 5,000 shares of stock available at \$3 that had gone to one of the original people in the company, and subsequently acquired the stock through Gairdner & Company from Francis. And, then, in discussing the problems of this company Carl had mentioned they were more or less stymied, they had sold about \$300,000 worth of preferred with a bonus of common and they had a limited line of credit at the bank, that they needed more money, and I finally interested Lambert & Company in the idea of buying \$300,000 convertible debentures, which they bought from Gairdner & Company, for one of their Toronto companies.

Q. When you say 5,000 shares of stock at \$3 was acquired, did you acquire it personally or did Gairdner's acquire it or was it acquired for clients of the firm?

A. It was acquired as a brokerage transaction through Gairdner for myself and clients.

Q. Then, you spoke of Lambert. And would you continue from there?

A. Well, Lambert & Company were customers of ours, we had interested them in a gas utility company in 1951, and we did a lot of brokerage business for them.

²Evidence Volume 43.

³Evidence Volume 93, p. 12573.

Q. With whom did you deal at Lambert?

A. Principally Mr. Christie.

Q. How long had you known him?

A. I had known Mr. Christie since university days, in 1928.

Q. Continue, please.

A. The convertible debenture issue, in effect, gave Lambert & Company, through Consolidated Toronto, control of Atlantic.

Q. That is, if they exercised their right to convert into shares they would control the company?

A. Yes. And this transaction was completed in Toronto through the underwriting department of Gairdner & Company.

Q. Up to this time had you met Mr. Morgan?

A. I can't say that I had. I am not sure. I may have met him on one occasion but I didn't know him.

Q. Did you first meet him in New York or was it after your return to Toronto?

A. I probably met him in Toronto, possibly at the time they closed this convertible debenture issue. I may have come up for it because subsequently he opened an account with Gairdner & Company and we did some stock transactions for him and I occasionally called him from New York and bought and sold some securities for him. So it is possible that I met him at the closing of the convertible issue."

The Advent of Lambert & Co.

Atlantic's records show that the first arrangements for launching this issue of debentures were made at the directors' meeting of June 27, 1955, which has been referred to. On that occasion \$300,000 worth of twenty-year, 5½ %, convertible debentures were created and their sale authorized to Lambert & Co. of New York on the assumption that supplementary letters patent increasing the capital of the company would be issued, dated the same day.

Forty-six thousand shares were set aside for the conversion of the debentures which was provided for at \$6.50 per share on or before July 2, 1960, the rate to increase \$1.00 per share per year until 1964. The payment of a fee of \$15,000 to Gairdner & Co. for finding Lambert & Co. as purchasers was also resolved upon. This transaction, which at one stroke virtually doubled the capital investment in Atlantic Acceptance, was pregnant with consequences for the future. The shares provided for converting the debentures put the purchasers in a position to call for control of the enterprise. The next meeting of directors, on August 24, passed a resolution to apply for listing the company's common and preference shares on the Toronto Stock Exchange. At the annual meeting held on September 23 two new directors were elected

replacing Medland and Evans. They were D. B. Mansur and A. C. Rooney, respectively president and secretary of Consolidated Toronto Development Corporation Limited, a company which owned the valuable Home Smith properties on the western outskirts of Toronto and since 1953 had been controlled by Lambert & Co. of New York.

Lambert & Co. was a partnership engaged in the investment of capital with offices at No. 2 Wall Street and may be described loosely as an investment bank or, in the continental phrase, a "banque d'affaires", not a deposit-taking institution or otherwise engaged in normal banking business. It was established in 1950 by Jean Lambert, who was born in 1920 in Saarbrücken in the mandated territory of the Saar, and was thus only nineteen years of age when war broke out in 1939. The armistice concluded between Germany and Marshal Petain's *de facto* ministry in 1940 occurred just prior to the date of his call-up for service in the French Army, and leaving Paris ahead of the invading Germans he escaped southward to Bordeaux. Armed with a United States visa and imbued with a desire to join the Free French movement in London, he found his way via North Africa to Lisbon after a brief spell of imprisonment in Madrid, where he was advised that since he had a sister in the United States he should proceed to that country and make himself available to the Free French delegation there. In Washington he became attached to the Free French purchasing mission, subsequently attending the international monetary conference at Bretton Woods and the San Francisco Conference where he made the acquaintance of politicians who were to become influential in post-war France. Thereafter he held himself out as a consultant in international financial and economic affairs and travelled extensively in Europe and South America. His marriage to Phyllis Bronfman, daughter of Samuel Bronfman of Montreal, president of Distillers Corporation-Seagrams Limited, occurred in 1949.

It should be noted that all the information about Lambert used here, not otherwise furnished by his partners, is derived from the evidence given by him on oath to the Securities and Exchange Commission in an examination conducted in New York by Peter J. Adolph of the Division of Trading and Markets on December 3 and 8, 1965.¹ At the conclusion of that examination he expressed his willingness to testify before the Royal Commission but, on being invited by counsel to do so at a later date, said that he had nothing to add to the testimony given on that occasion. He described the efforts made by his influential and wealthy father-in-law to coax him into one of the Bronfman enterprises which, he said, he resisted to maintain his own independence. Finally, on the advice of Alan Dulles, a senior partner of the well-known New York law firm of Sullivan & Cromwell, whom he had met at San Francisco, he admitted his wife into limited partnership,

¹Exhibits 2472-3.

she supplying \$1,000,000, \$900,000 of which was her own investment and \$100,000 which she lent to her husband and which was in due course repaid. Thus, in 1950, Lambert & Co. was born.

Lambert said that his first general partner was Alan Thomas Christie who joined him in the same year. Oddly enough, Christie himself, in the course of his extensive evidence given to this Commission,² says that he was not admitted to partnership until two and a half years later but, since the general partners were only required to invest \$5,000 as a condition of joining the firm, the conflict of evidence is of no consequence. Christie was born in Hamilton in 1905, just sixty years before the date of the default of Atlantic Acceptance. He, like King, was a graduate of the University of Toronto in Commerce and Finance and later of the School of Banking at Rutgers University in the United States. After a brief period with the City of Toronto he entered the investment department of the Sun Life Assurance Company in Montreal in 1930 and remained with that company until 1943 when he went to New York to join the Bank of New York as a security analyst, thereafter becoming an assistant vice-president of that institution. Here he became acquainted with and, to some extent, specialized in the affairs of finance companies and their credit problems. Here also he became a friend of one of his colleagues, Harvey Molé, soon to leave the Bank of New York and join the United States Steel and Carnegie Pension Fund of which in due course he became president. Here finally, through mutual connections in Sullivan & Cromwell, he met and joined Jean Lambert, now thirty-one years old.

Lambert, as the managing partner of Lambert & Co., had five general partners, Christie, A. C. Maher, Paul C. Sheeline, Gay V. Land and Pierre J. Lelandais. Christie mentions a Mr. Vautravers, and Lambert a Mr. Norman, both of whom resigned early in the partnership's history, and both of them refer to one Russell Cissel who died after coming to the firm from Sullivan & Cromwell. Of the surviving partners all but Maher were examined by the Securities and Exchange Commission in New York and Christie before the Royal Commission here. Of those examined all but Christie were younger than Lambert; two, Lambert and Lelandais, were born in France and Sheeline was brought up there; Sheeline and Lelandais were graduates of Harvard; and Sheeline, like Cissel, served his apprenticeship with Sullivan & Cromwell. Land was a chemical engineer and was invited to join the firm as a partner because of his experience in the oil industry. Christie pre-eminently, and all of them played a part in the affairs of Atlantic Acceptance. At the outset two large transactions involving participation by Lambert & Co. with the international investment banking house of Lazard Frères, the details of which it is not necessary to elaborate upon, established the firm's reputation as successful intermediaries in the field

²Evidence Volume 91.

of international finance. The first involved the reorganization of a substantial but unenterprising Scottish firm into fifteen American corporations and the second involved the merger of a number of Alberta oil companies. In 1952, at a time when Lambert was establishing Lambert & Cie. in Paris, he and his wife separated and were subsequently divorced, but Mrs. Lambert remained a limited partner in the firm on the same basis as before, and, in spite of her predominant investment, never played an active part in its management or affairs. The next step in its fortunes was the acquisition of an interest in Consolidated Toronto Development Corporation through the intervention of an English banking firm, an interest which was subsequently developed into 90% ownership of a company which held valuable undeveloped property.

To manage this important acquisition, which according to him had cost his firm upwards of \$5,000,000, Lambert appointed as president David B. Mansur C.B.E., a distinguished Canadian public servant who had been a contemporary of Christie in the service of Sun Life Assurance Company before the war, had held important offices in the field of wartime finance in Ottawa and had been from 1946 to 1954 president of Central Mortgage & Housing Corporation. For the next six years Mr. Mansur was the man on the spot for the Lambert interests which he handled by all accounts with the greatest competence and universal approval until his resignation in 1960 when his responsibilities were assumed by Alan Christie. Although Mansur and Rooney, as has been seen, were elected directors of Atlantic Acceptance in September, 1955, the \$300,000 in debentures purchased in June of that year remained in the hands of Lambert & Co. until April 24, 1958, and then were sold to Consolidated Toronto Development Corporation and thereafter converted into common shares before the first conversion date.

The Flying Tiger Deal

The next important transaction for Atlantic Acceptance in which Lambert & Co. played a decisive part involved the purchase of two Douglas DC4E aircraft from a Californian airline known as the Flying Tiger Line Incorporated, and their re-sale to Pacific Western Airlines Limited in Canada. Christie in his evidence went fully into the origins of this deal which, in Davidson's opinion, saved Atlantic from insolvency. Pacific Western Airlines in 1957 were being substantially financed by the Industrial Development Bank, an emanation of the Bank of Canada, and had a contract with the appropriate authority in Washington for supplying transportation to and from the installations of the Distant Early Warning Line in north-western Canada. The initial approach was made by the treasurer of the Flying Tiger Line to the Bank of New York which directed him to Christie. Since the civil aviation authorities

in Canada insisted on domestic ownership of the aircraft, and since it was the policy of the Bank of Canada, at a time of what Christie described as "very tight money", not to make funds available for the purchase to be made in the United States, negotiations between the parties were at a standstill. In order to provide that title to the aircraft be held in Canada, it was arranged that Atlantic Acceptance would buy them from the Flying Tiger Line for \$1,170,000 and sell them to Pacific Western Airlines for the same price, to be paid for by \$200,000 in cash and \$970,000 secured by two conditional sales agreements providing for repayment over a period of 30 months, together with interest at $1\frac{1}{4}\%$ per month or 15% per annum. Christie persuaded the Bank of New York to lend Atlantic \$324,000 U.S. at $5\frac{1}{2}\%$ secured by non-convertible debentures, and the balance of \$625,000 was supplied by Lakeland Natural Gas Company Limited, which received Atlantic debentures in that amount bearing interest at 9%, a rate which he said was competitive at the time in the short-term money market in Canada. The necessary debentures were authorized by the directors of Atlantic on August 26, 1957 and the transaction was successfully completed, resulting in a substantial profit for both Atlantic and Lakeland, although Atlantic was obliged to remit one-fifth of their 15% interest to Lambert & Co.

Two comments should perhaps be made on Christie's evidence with respect to this transaction. He was at pains before the Commission to repudiate the suggestion made in the press that Lambert & Co. exercised any control over the activities of Lakeland. He admitted that Lambert & Co. had a minor interest in Great Northern Gas Utilities Limited, which in turn had a small interest in Lakeland, and that Lambert & Co. had assisted Lakeland in some financing, as a result of which he knew that the latter company had unemployed funds to spare. Nevertheless, of the seven directors of Great Northern Gas Utilities three were Christie, Mansur and Carman King, and Sanford Reis was president of Great Northern Gas Utilities and vice-president of Lakeland. No doubt the expedients favoured by Lambert & Co. were not to be ignored by either of these Canadian corporations. Again, Christie asserted that it was the wish of the Lambert firm to enable the few remaining minority shareholders of Consolidated Toronto Development Corporation to participate in its Canadian enterprises and thus Atlantic Acceptance was selected to derive the advantages attendant upon the aircraft transaction. According to Christie's own evidence Consolidated Toronto Development had at this time no interest in Atlantic Acceptance, and if the statement is to be given any weight it must indicate that the transfer of Lambert & Co.'s interest in Atlantic to Consolidated Toronto Development was contemplated many months before it actually occurred. Information published in the Financial Post's "Survey of Industrials"

indicates that Great Northern Gas Utilities purchased a 33⅓ % interest in Lakeland in 1954.

Lambert & Co. Quicken the Pace

Mr. Christie's life-long friend and personal broker, Carman G. King, has testified¹ that Lambert & Co. were disappointed in the immediate progress made by Atlantic Acceptance after their purchase of debentures in the amount of \$300,000. He assigns as one reason the inability of the company to sell secured notes because of its insufficient record of continuously paying annual dividends on its shares as required by the Canadian and British Insurance Companies Act.² By 1959, in fact, the company had paid five consecutive annual dividends on its preference shares of \$1.10 per share and thereby secured the qualification. A quarterly dividend of 10¢ per common share was first declared in 1960.

But the pace of expansion was not fast enough, and in the course of 1958 Lambert & Co. made two decisions as to the immediate future of Atlantic. If the company could not borrow by the now fashionable method of issuing secured notes it must have more "equity", or in other words a greater sale of its capital stock. To avoid loss of their own preferred position consequent upon the convertibility of their debentures this should be done by offering "rights" to the existing shareholders to acquire the balance of the authorized common shares hitherto unissued. Secondly, they felt that Powell Morgan, whose management, as we have seen, was confined to telephone calls from his headquarters in Niagara Falls and increasingly rare appearances at the elbow of Davidson, should devote his full time to Atlantic. Both these decisions were acted upon.

The resolution to offer rights to common and preference shareholders and the holder of the 1955 debentures was passed by the Atlantic directors on June 16, 1958. At this meeting it was recited that of the 115,000 authorized common shares 53,800 had been issued, as had all of the 15,000 authorized preference shares, the balance of 61,200 common shares being held for the event of conversion by holders of the debentures and preference shareholders. The offer was to be made, to all shareholders of record on August 15, 1958, of the right to purchase one share of common stock for each share held, common or preference, at the price of \$5.00, and to the holder of the 1955 debentures, by this time Consolidated Toronto Development Corporation, of one common share at the same price for each \$6.50 of debentures held. At the same time, and to make the necessary stock available, it was resolved to increase the authorized number of common shares by 250,000 to a total of 365,000, not to be issued for more than an aggregate value of \$2,000,000. At a subsequent meeting on September 12 the president

¹Evidence Volume 93.

²R.S.C. 1952, c.31.

reported that by September 10, the last date for exercising them, all rights permitted to the debenture holder had been taken up, the preferred shareholders had assumed 7,825 shares and the common shareholders 98,554 shares, for a total accretion to the treasury of \$531,895. It was then further resolved that the balance of 8,574 shares, in relation to which rights had not been exercised, would be offered, with the approval of and consequent listing by the Toronto Stock Exchange, to Consolidated Toronto Development Corporation. It will now be seen that this corporate vehicle of Lambert & Co. as a result owned, or had pre-empted by option, a total of 100,900 shares in the round from the two transactions which have been recorded here, or roughly 40% of the equity of Atlantic.

The condition attached to Lambert & Co.'s participation in this infusion of capital was that Morgan should cease his one-handed operation of the finance company and leave his employment by International Silver to devote all his time and energies to Atlantic. All the Lambert partners examined have testified to their confidence in Morgan's integrity and ability to make the company move. Accordingly, with effect from September 1, 1958 Morgan assumed full management and executive control of Atlantic's affairs. At a meeting of the board held on October 14, at which Mansur presided, approval was given to his employment contract as set out in a letter dated August 18³ at a salary of \$25,000 per annum for a period of five years. He also obtained from the company an option to purchase 15,000 of its common shares, exercisable as to five lots of 3,000 shares each in overlapping biennial periods from September 1, 1959, to August 31, 1965, at a price of \$5.375 per share. By this time, it may be supposed, both Mansur and Rooney must have been able to make some assessment of Morgan's quality and they must have shared, if indeed they had not to some extent inspired, the confidence in him asserted by the Lambert partners. They could not know that the one-handedness with which he had hitherto managed Atlantic was inveterate. Rooney, as a chartered accountant, was deputed to make inquiries about Morgan from his old employers at Price, Waterhouse & Co. and there learned nothing to his discredit. Christie apparently made no inquiries and was not aware of any being made. It is a measure of the self-confidence of Morgan's new sponsors that they did not think it worth while to ask the International Silver Company, directly or indirectly, as to how he was regarded. Perhaps when Morgan sought permission to remain as a director of International Silver after leaving its employ, and secured it from the Atlantic board, their attention was diverted from these ordinary precautions. The Commission has, however, been advised by John B. Stevens, the current president of the International Silver Com-

³Exhibit 20.

EARLY DAYS

pany of Meriden, Connecticut, in a letter dated November 23, 1966, in the following terms:

"From all we can determine he handled his work for the International Silver Company efficiently and most of the time he spent on the business of the Atlantic Acceptance Corporation was after hours and on weekends.

The cause of his dismissal in 1958 was his handling of one of our accounts receivable, namely, Associated Housewares Distributors Limited. He permitted an indebtedness to the company on the part of Associated Housewares of \$151,000 and when the company went into bankruptcy this turned out to be a complete loss for International. A creditors' committee for Associated Houseware was formed in July 1958.

Actually this was the final straw in a series of events which indicated Mr. Morgan had been getting much too independent and difficult to tie down in answering specific questions or doing specific assignments."

The trustee of the bankrupt estate of Associated Housewares Distributors was William Louis Walton, C.A. whom Morgan met for the first time over his employer's claim. From this encounter important consequences were to flow.

Subsidiaries and Branch Offices, 1953-1958

The severance of Morgan's connection with the International Silver Company marks the end of a period of modest and, indeed, precarious growth in the history of Atlantic Acceptance and the beginning of an era of abnormal expansion of the company's activities. It is desirable to pause here to record a number of decisions which had already been made with a view to diversifying its operations, and particularly to acquire a foothold in the field of automobile financing which is the backbone of most acceptance companies' business. It has been seen that Atlantic broke into a highly competitive field by providing accommodation for dealers in television sets who were marketing, with more enthusiasm than prudence, a product which could not compete in the long run with that of established manufacturers. The "Coronet" television set was largely sold in the Hamilton area and in the Niagara Peninsula. The "Premier" set was distributed from Ottawa and it was in Ottawa that Atlantic's first branch office was established on August 1, 1954.¹ In June the following year a second branch office was opened in St. Catharines, Ontario to enlarge the company's operations in the heavily industrialized Niagara Peninsula,² but by the end of 1958 only one more had been added, in Kingston, Ontario. The presence of Ernest A. Lindley, an automobile dealer in Dundas,

¹Exhibit 33.

²Exhibit 17.

Ontario, and his appointment as secretary of the company might have been expected to produce the badly needed *entrée* to motor vehicle financing, but Lindley proved unexpectedly attached to a connection with the long-established and ubiquitous Industrial Acceptance Corporation whose withdrawal from the financing of furniture and appliances in the Hamilton area produced an accession to Atlantic of additional accounts receivable of the type which it was not particularly interested in acquiring. Eventually an agreement was reached with Lindley in January 1956, no doubt facilitated by a loan of \$28,000 secured by a mortgage of certain property cast in the form of an agreement for sale, with regard to which, according to Davidson, Ramsay Evans had raised strong objections as to the propriety of making such a loan to a director. The situation was expected to be eased by the acquisition on June 18, 1956 of Talbot Finance Company Limited, a small concern in St. Thomas, Ontario, for \$82,890. Talbot's business was almost equally distributed between automobile and electrical appliance financing and unlike, in Davidson's view, the branch offices at Ottawa and St. Catharines, was a profitable operation for some time after acquisition. Its name was subsequently changed to Atlantic Acceptance (St. Thomas) Limited and in 1961 its charter was surrendered, although a branch office of the parent company continued to function in St. Thomas. A more important departure, destined to produce the most profitable and stable operation in the consolidated affairs of Atlantic Acceptance, was the incorporation of Atlantic Finance Corporation Limited primarily to conduct the type of business authorized under the Small Loans Act. These direct loans of cash to borrowers were limited to amounts not greater than \$1,500, were accounted for on the simple basis of re-calculating the interest payable as the principal was reduced and presented no opportunities for manipulating deferred interest charges. Moreover the Small Loans Act was administered by the Department of Insurance in Ottawa, thus providing the only government regulation in the money-lending field in which finance companies operated. The resolution to incorporate this company was taken by the directors on January 13, 1956 and Atlantic Finance Corporation Limited received its charter as an Ontario public company, dated February 22. It did not confine its operations completely to the small loans field and its conditional sales business was in the future to be of significance in proportion to the whole. The company originally functioned in the existing branch offices of Atlantic Acceptance, and perhaps it should be noted that Davidson's recollection of the motive behind its incorporation was to participate in the benefits of the practice frequently resorted to by small loan companies, of lending money to borrowers from acceptance companies for the purpose of making payments upon conditional sales contracts or, which was less desirable, of paying them off in advance of maturity. The employees of Atlantic

Finance were, generally speaking, indistinguishable from those of Atlantic Acceptance and were all paid by the parent company which charged the operating costs back to its subsidiary.

The Horizons of 1959

The year 1959 was one of extraordinary expansion for Atlantic, during which its accounts receivable, less allowance for bad debts, rose from \$3,240,069 (a figure only modestly higher than that published for the year 1957) at the year-end in 1958 to \$9,279,695. The corresponding increase in net income earned was from \$48,391 to \$152,883. Examination of many transactions in 1959 properly belongs to subsequent sections of this report so far as they are relevant to the Commission's terms of reference. Two events may here be recorded which mark, in Sir Winston Churchill's phrase, "not so much the beginning of the end as the end of the beginning". With C. P. Morgan in the saddle, the easing of lending restrictions by the chartered banks imposed in 1956 at the behest of the Bank of Canada,¹ the expansion of the company's borrowing power consequent upon the qualification of its securities resulting from a five year consecutive payment of dividends on its preference shares and the sanguine sponsorship of its Wall Street mentors, the company looked out on broad horizons. The sixth annual report of the president to the shareholders for the year 1958 dated at Hamilton on March 26, 1959 had, under the heading of "Profit Potential" the following forecast to make:²

"Your company in the past has been fortunate in being able to engage in profitable operations without the necessity of investing large amounts in capital loans to dealers and in the wholesale purchases of dealer inventories, each of which normally yield a low rate of return. In like manner, reserves payable to dealers have been kept at a minimum.

With the increase of capital funds available arising principally from the issuance of stock rights referred to above, and a substantial increase in our borrowing capacity, your company now finds itself increasingly competitive, however, it will, unquestionably, also find it necessary to invest substantial funds in low yield investments with dealers and increase reserves payable to such dealers resulting in an over-all reduction in the percentage of earnings in relationship to invested capital, when compared with recent years. It is believed that this reduction will be more than off-set by the increase in volume coupled with the fact that we can reasonably expect a reduction in operating costs when compared to volume arising from the personnel of your company being employed at a rate closer to maximum utility.

It is planned to acquire an interest in a factoring company and a soft goods finance company to diversify your company's interest in the finance field.

¹Report of the Governor of the Bank of Canada for 1956.

²Exhibit 39.

All in all, the outlook for 1959 is bright and the profit potential for this year, based upon our assessment of general business conditions, is substantial. Due to the highly competitive automobile field it is our plan to diversify our business into all fields of financing. In this way a much greater return to the shareholders on their investment can be anticipated.

If our estimates for 1959 are realized, there is no doubt that our hopes for a common stock dividend on some regular basis will materialize at an early date."

The proposal to "acquire" a factoring company culminated in fact in the creation of Commodore Sales Acceptance Limited, in which at first Atlantic held a 51% interest and of which more will be heard later. The soft goods finance company was the Premier Finance Corporation Limited, a Toronto company incorporated in 1929, which had long been in the business of financing retail purchases principally of textiles and textile products and was acquired from Clarence F. O'Neill in February 1959, O'Neill being retained to manage its operations which in due course changed markedly in character.

A corollary of Lambert & Co.'s insistence on Morgan devoting all his time to Atlantic was the removal of his own office to Toronto, where for a brief period he and his immediate staff occupied space adjacent to the offices of Consolidated Toronto Development Corporation. Early in 1959 these executive offices were moved to the Concourse Building at 100 Adelaide Street West, and here they stayed during the remaining period of Morgan's control of the company's affairs with which this report is principally concerned. Davidson testified that the move away from the premises of Consolidated Toronto Development Corporation was owing to Morgan's restiveness under the eye of D. B. Mansur. During 1959 also, the head office of the company was moved from Hamilton to Oakville where it also remained, although a change in premises to the outskirts of that half-way house between Toronto and Hamilton subsequently occurred. The annual meeting of shareholders on April 10 produced a radical change in the composition of the board of directors. Carl Bastedo, Ernest A. Lindley and Norman F. Firth, three of Morgan's closest associates in the days before the connection with Lambert & Co. was established, were not re-elected, but were superseded by William H. Wallace, a Lambert nominee, J. Aubrey Medland, who resumed his place at the board after an absence of nearly four years, and Wilfrid P. Gregory, vice-president and managing director of British Mortgage & Trust Company. Like Alan Christie, Wilfrid Gregory had been a friend since university days of Carman King and to this circumstance owed his introduction to Powell Morgan.

The Climax: Long-term Lending by U.S. Steel Pension Fund

By far the most important transaction in which Atlantic Acceptance was engaged in 1959 occurred at the end of the year and

involved the participation of the United States Steel and Carnegie Pension Fund for which Alan Christie was responsible.¹ Here his association and friendship with Harvey Molé stood Atlantic in good stead, as would a similar relationship with James Nicely, financial vice-president of the Ford Foundation, in the following year. Mr. Molé was a pioneer of the practice of making speculative investments secured by obligations subordinated to the securities of the existing shareholders but buttressed with warrants to purchase equity at an advantageous price. The first mention of what was afoot in the records of Atlantic occurs in the minutes of the meeting of the board of directors dated October 9, with a quorum composed of Morgan, Mansur and Rooney. Short-term borrowing by the issue of notes payable within 365 days had already been resorted to and discussed in the minutes of June 17, at which time a committee of directors had been formed to explore the possibility of long-term borrowing from institutional investors. At the October meeting Morgan reported on discussions which had taken place in New York "with two or three highly responsible institutional investors who had agreed to purchase an issue of two and a half million dollars aggregate principal amount of subordinated debentures of the company at par." These were to be accompanied by 15,000 common shares at \$8 per share and 10,000 non-voting convertible Class A shares at the same price, together with warrants exercisable over a ten-year period to authorize the purchase of an additional 50,000 Class A shares at a price of \$10 per share within the following six years and \$12.50 per share within the succeeding four. A further report was made at a subsequent meeting on November 16, attended by the three directors already mentioned and Gregory, Medland and Wallace, as well as A. L. Beattie of Messrs. Osler, Hoskin & Harcourt, Toronto solicitors who had succeeded Evans as legal advisers to the company and who also represented the interests of Lambert & Co. in Ontario. On this occasion it was reported that the 15,000 common shares had already been issued to the "persons committed to purchase notes" at \$8 and a resolution was passed confirming the action of the president in engaging Lambert Management Corporation as financial advisers to the company for a period of three years, commencing January 1, 1960, for a fee of \$1,500 per month. The meeting adjourned to permit special meetings of common and preferred shareholders to consider the special resolution enacted by directors on October 9, and thereafter reconvened to record confirmation of this resolution, subject to amendments made describing the Class A shares as "second preference shares without par value to the number of 75,000" which would participate equally in dividends with the common shares. This protracted and important meeting of the board was then told that, following the issue of \$2,500,000 worth of

¹Evidence Volume 91 and Exhibit 2469.

unsecured notes, as the twenty-year 6½% debentures were now called, the company would be in a position to raise further funds by the issue of short-term secured notes to be sold publicly rather than by private placement, and to be secured by the lodging of notes receivable held by the company at 115% of the aggregate principal amount of the notes payable. For the purpose of selling these notes it was proposed that Annett & Co. be appointed Atlantic's fiscal agent and it was so resolved. This programme was to proceed when the financial statements of December 31, 1959 were available, concluding the five-year period of consecutive payment of dividends on the outstanding preference shares.

The deal was closed for the United States Steel and Carnegie Pension Fund in New York on December 17 with Morgan Guaranty Trust Co. and the First National City Bank. Other than a reference to these agents and the nominees of the fund, Thomas & Co. and Schmidt & Co., no mention may be found in Atlantic's minutes of the identity of the purchaser of its first long-term subordinated notes and second preference shares which made available to it nearly \$3,000,000 in United States funds. Davidson has recorded Morgan's elation and the Lambert partners had every reason to feel satisfied. Where United States Steel had led others would follow, and the ship was fairly launched.

CHAPTER III

Structure and Growth of the Atlantic Group

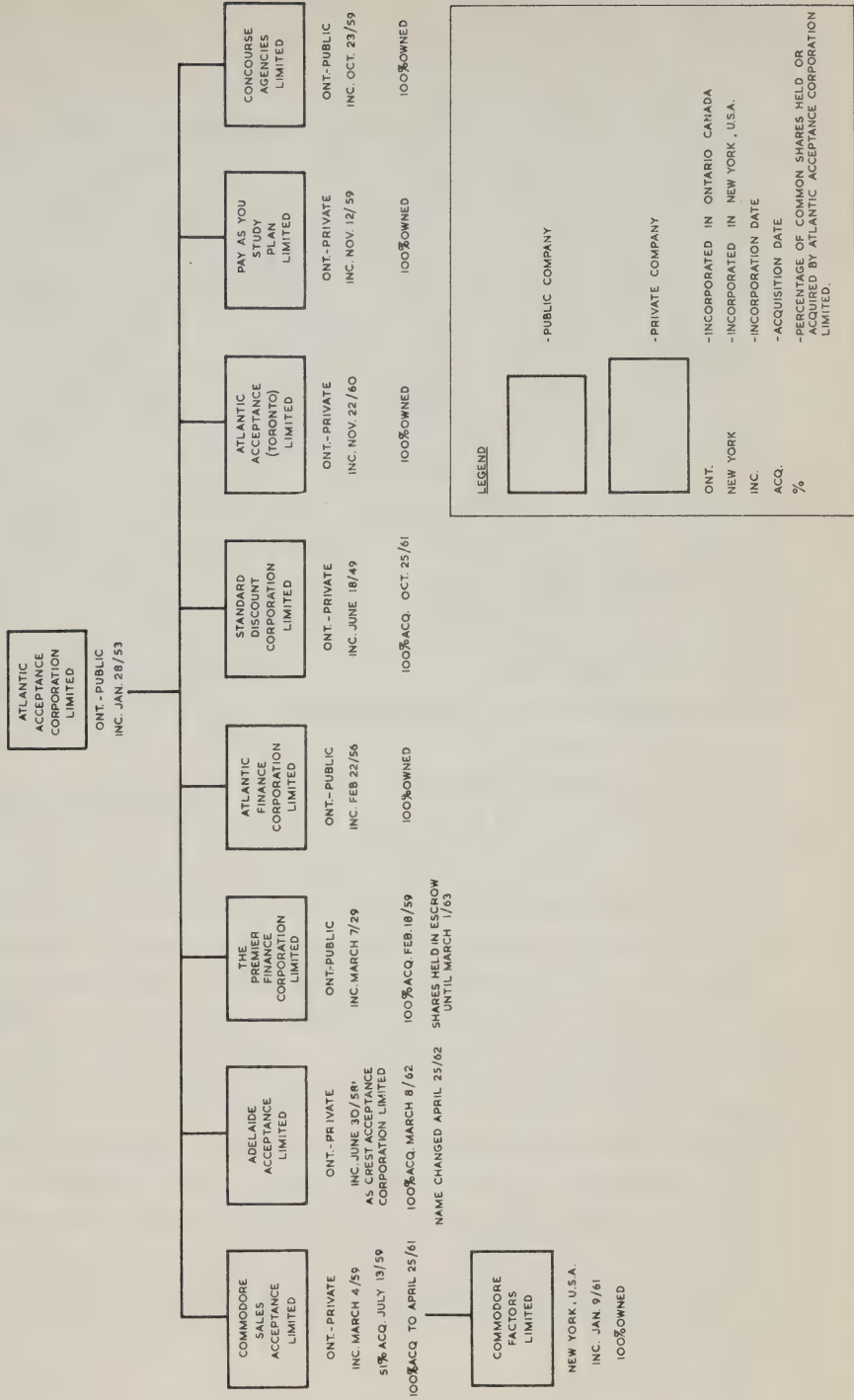
The general appearance of Atlantic Acceptance Corporation Limited at June 17, 1965, the date of receivership, was, as has been said, presented to the Commission in the evidence of Mr. Orr on March 7 and 8, 1966, accompanied by numerous charts and schedules prepared under his direction and at the request of counsel. The records of the company, its books of account, published financial statements and prospectuses, all of which had been submitted to the Commission and entered in evidence, were the principal source upon which he and his colleagues relied, supplemented by conversations with and enquiries made from those employees of the company considered to have knowledge of its affairs. Its corporate structure at June 17, 1965, showing subsidiary companies all of which were wholly-owned at the time of default, is illustrated on the chart opposite.¹ The head office of the company at the time of incorporation in 1953 was fixed at Toronto but shortly after was changed to Hamilton, where, as already described in the previous chapter, for almost the first five years of its existence its business was mainly carried on. Thereafter the head office in law and in fact was at Oakville and executive offices were opened in Toronto in the Concourse Building at 100 Adelaide Street West.

The Subsidiary Companies

The chart shows that Atlantic's first offshoot was Atlantic Finance Corporation Limited, also a public Ontario company, incorporated three years later to operate predominantly, although not entirely, in the field of small loans and that two companies were acquired rather

¹Exhibit 541.

CORPORATE STRUCTURE AT JUNE 17, 1965



than created to extend the operations of Atlantic in established areas of finance company business. These were the Premier Finance Corporation Limited, incorporated as a public company in Ontario on March 7, 1929 and wholly acquired on February 18, 1959 from Clarence F. O'Neill as mentioned before, and Standard Discount Corporation Limited, a private Ontario company, incorporated June 18, 1949 and wholly acquired on October 25, 1961 from Samuel and Arthur Baker who, like O'Neill, retained a managerial position. Premier Finance was engaged at the time of its purchase by Atlantic in financing retail purchases of soft goods and charge or budget accounts at retail stores in the Toronto area, and Standard Discount conducted similar business. Atlantic Acceptance (Toronto) Limited was another private Ontario company created by its parent, incorporated on November 22, 1960, and wholly-owned; its purpose was to take mortgages of land, subject to certain restrictions under the provisions of section 3(2) of the Corporations Act,¹ which exempted it from registration under the Loan and Trust Corporations Act.² Pay As You Study Plan Limited was incorporated as a private company on November 12, 1959 to finance student loans and Concourse Agencies Limited, a public company, was originally incorporated on October 23, 1959 as Humbertown Services Limited to provide credit-card facilities for shoppers at Humbertown Plaza, a Consolidated Toronto Development Corporation enterprise. Both of these were also wholly-owned by Atlantic, were unprofitable throughout and represented unrealized efforts to diversify Atlantic's business.

The remaining subsidiaries which have been referred to in evidence as the Adelaide Street group, and by the Montreal Trust Company as the Commodore group, were operated from the executive offices of Atlantic at that address. Commodore Sales Acceptance Limited was incorporated as an Ontario private company on March 4, 1959 and differed from the others in that, after an interval of four months of independent if not active existence, Atlantic bought only 51% of its common stock on July 13 of the same year, and the remainder after the lapse of over two years on May 15, 1961. It, in turn, had a wholly-owned subsidiary, Commodore Factors Limited, incorporated in the State of New York on January 9, 1961, and both companies were created for the purpose of "factoring" accounts receivable. "Factoring" is a word bearing a special meaning peculiar to the vocabulary of North American trade, and must be carefully distinguished from any association with the word "factor" as known to the law. The sense in which it must be used in this report, and in connection with the operation of these companies, describes the process of purchasing accounts receivable

¹R.S.O. 1960, c.71.

²R.S.O. 1960, c.222.

at a discount from a vendor to whom they are originally owed to put cash in his hands and to assume the task and risk of collecting them. Finally there was Adelaide Acceptance Limited, incorporated as a private Ontario company on June 30, 1958 under the name of Crest Acceptance Corporation Limited, and acquired in its entirety on March 8, 1962.

The affairs of this complex of companies were presented to the shareholders of Atlantic Acceptance and the public at large on a consolidated basis; that is to say that, after eliminating inter-company debts, the assets and liabilities of all of them were added up and shown in the aggregate on the consolidated balance sheet of Atlantic Acceptance and its subsidiary companies, the operations for the year being treated in the same manner. Except for a period of a few months after incorporation the company's auditors had been Wright, Erickson, Lee & Macdonald of Hamilton who had offices in the same building at 66 King Street West. They audited the accounts of the parent company, Atlantic Finance Corporation, and Atlantic Acceptance (Toronto) and reported on the consolidated financial statements. The other subsidiaries had different auditors upon whom Wright, Erickson & Co. relied throughout the period during which they conducted the audit which concluded with the financial statements at December 31, 1963. Thereafter they were succeeded by Deloitte, Plender, Haskins & Sells who performed the same function and who relied, in their turn, on the same auditors in relation to the same subsidiary companies with the addition of Pay As You Study Plan and Concourse Agencies.

The Financial Statements

Table 1¹ is a condensation of the consolidated balance sheets and income statements of Atlantic Acceptance Corporation Limited and subsidiary companies prepared from the published annual reports of the company, beginning with the first annual report with respect to the situation as at June 30, 1954 and ending with that of December 31, 1964 which was the last audited statement issued by the company before receivership. By reading across the page it is possible to make a quick comparison of the figures appropriate to each particular year, shown in vertical columns. The two graphic charts,² which appear overleaf, show the trend of growth in accounts receivable less the allowance for bad debts taken in each year, secured public borrowing, subordinated borrowing, secured bank loans and share capital, and the expansion in the number of branch offices occupied by Atlantic Acceptance and Atlantic Finance, severally and jointly. Unlike the condensed consolidated financial statements the charts include the period

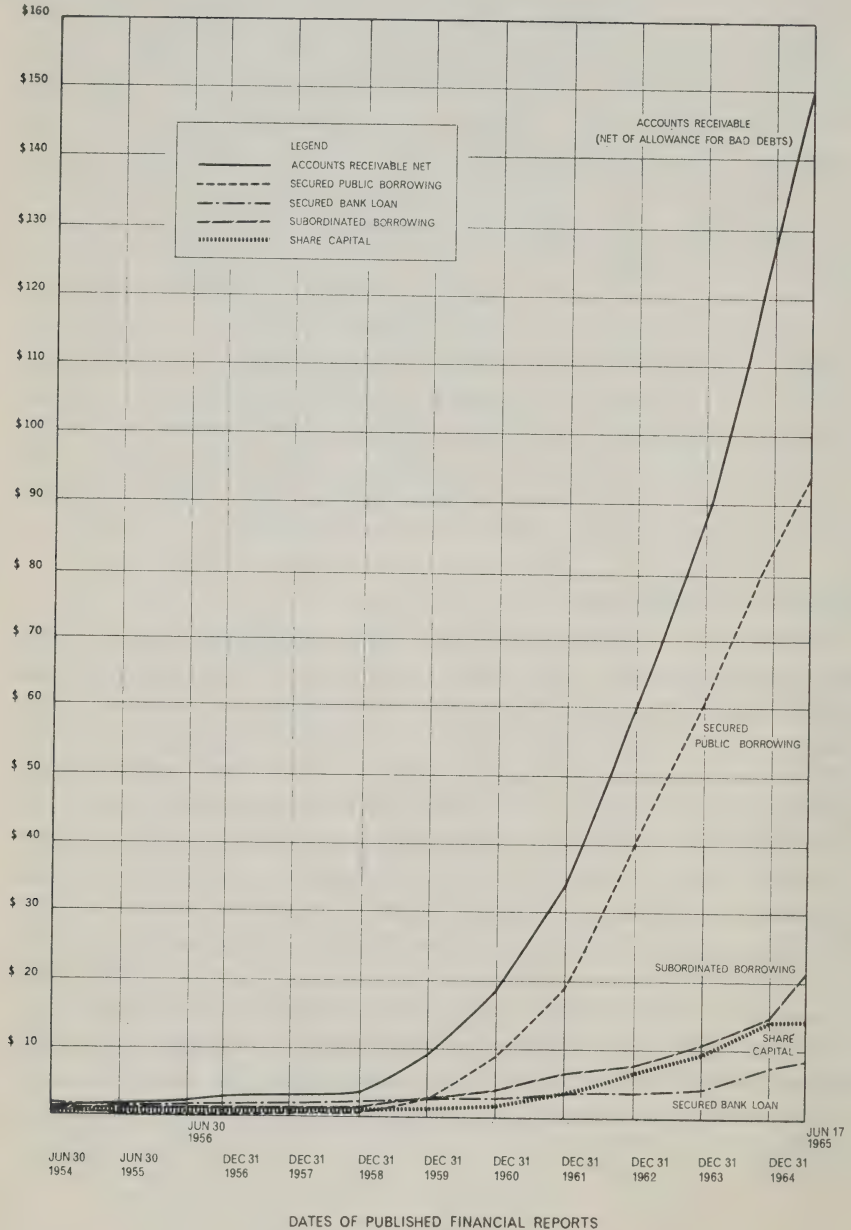
¹Exhibit 542.

²Exhibits 543-4.

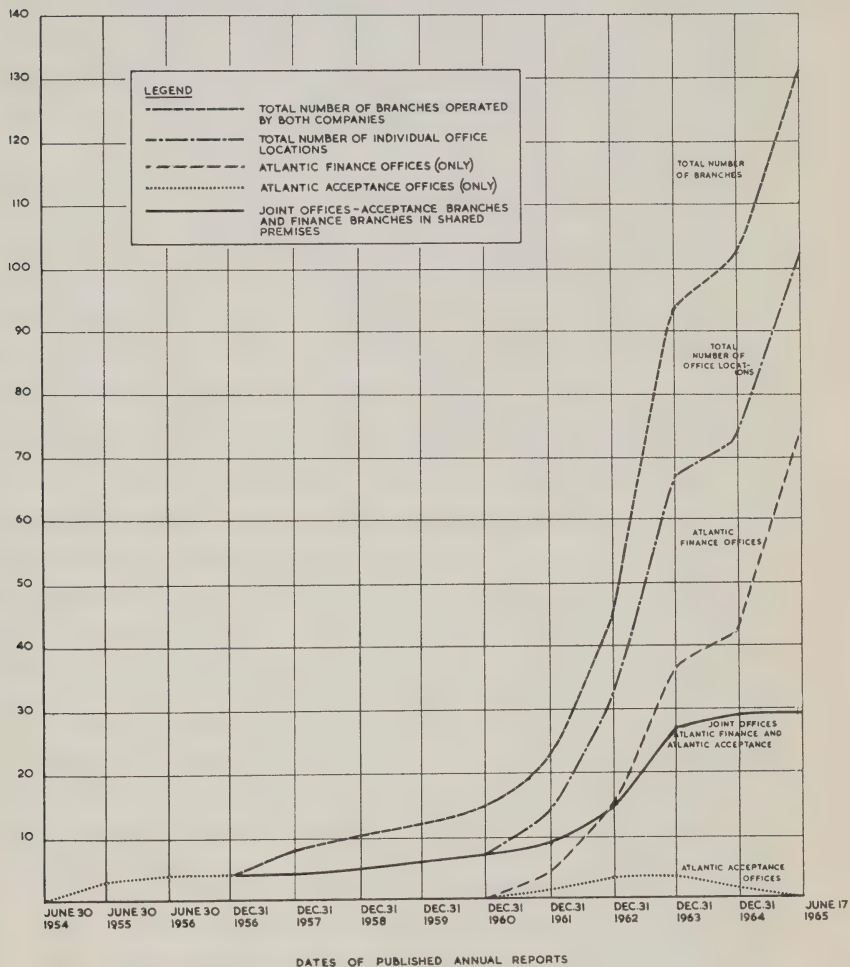
ATLANTIC ACCEPTANCE CORPORATION LIMITED

THE GROWTH OF THE COMPANY
FROM INCEPTION TO THE DATE OF RECEIVERSHIP

AMOUNT OF
LOAN PORTFOLIO,
DEBT AND CAPITAL ACCOUNTS
(MILLIONS OF DOLLARS)



ATLANTIC ACCEPTANCE CORPORATION LIMITED
AND ITS WHOLLY OWNED SUBSIDIARY
ATLANTIC FINANCE CORPORATION LIMITED
 THE GROWTH OF FINANCE AND ACCEPTANCE BRANCHES
 FROM INCEPTION TO THE DATE OF RECEIVERSHIP



from January 1 to June 17, 1965, the date of receivership; the same broken period, although not included in the condensed financial statements, is illustrated by consolidated financial statements prepared by Deloitte, Plender, Haskins & Sells for the receiver and manager and submitted on August 10, 1965. Since these statements were unaudited and not published by the company, they are not included in the condensed financial statements previously referred to; moreover they suffer from, or perhaps benefit from a restatement of the allowances for bad debts against notes and accounts receivable of two and a half times what was shown in the statement for 1964 reported on by the same auditors, an upward revision which would have been vigorously and perhaps successfully contested by the former management had it survived the disaster of default. The balance sheet is appended at Table 2³ to complete the record, and, like the graphs, shows that Atlantic's rate of expansion was in the order of those stars in the firmament known as "red giants", whose huge enlargement is the signal for imminent explosion.

Indeed the most striking aspect of these statements and charts is the transformation of the affairs of the company which occurred in the year 1959 and to which reference has been made in the previous chapter as corresponding with C. P. Morgan's assumption of full responsibility for management, insisted on by Lambert & Co. in the course of 1958. Beginning with that of June 30, 1954, the end of the company's first fiscal year, and ending with that for December 31, 1958, they indicate modest growth, qualified to the extent that the assets for 1957 and 1958 include \$1,008,998 and \$685,733 respectively as accounts receivable, the sums due from Pacific Western Airlines arising from Atlantic's financing of the purchase of the Flying Tiger aircraft without which it is doubtful that any profit could properly have been shown for the operations of those years. It will be observed that in the year 1959, some of the salient events of which have already been touched upon, the assets of the complex grow by more than three times to \$11,189,330, an increase of something in the order of \$4,000,000 or three and a half times what they were stated to be at the end of 1958. This was the largest proportionate increase in Atlantic's history, although that of assets in the succeeding years was spectacular enough. At the end of 1960 they were recorded as \$19,843,720, in 1961 \$36,305,805, in 1962 \$63,272,986, in 1963 \$91,873,203 and in 1964 \$132,937,729; looking at the unaudited consolidated balance sheet of June 17, 1965,⁴ they are shown as having reached \$154,809,926 in spite of the increased reservation against bad debts. These assets, from beginning to end, are overwhelmingly attributable to notes and accounts receivable.

³Exhibit 546.

⁴Table 2.

Until the publication of the statement for 1963 it had not been the practice to indicate in these statements the specific amounts deducted from the accounts receivable by way of allowance for bad debts, only the net figure being shown. In that year the amounts were given in respect of 1963 and the preceding year for comparative purposes, so that the shareholder might observe that in 1962, in respect of receivables of \$60,815,509, \$1,228,733 was reserved and in 1963, for receivables of \$88,227,839, the allowance was \$1,747,176. These figures are taken from the statements themselves⁵ and are not shown on the condensed statements.

Atlantic Acceptance showed a profit for each year of its operations according to the condensed consolidated income statements opposite the entry "net income earned", beginning with the year ended June 30, 1954 in the amount of \$14,700 and concluding at December 31, 1964 in the amount of \$1,100,004. The corresponding statement for the period ending July 17, 1965 not unnaturally shows a pronounced loss of \$2,813,660, but it would be unreasonable to suggest that this had been prepared on a basis consistent with that of the preceding year. It has already been noted that Atlantic had consistently paid a dividend of \$1.10 per share on its first preference shares from 1954 to 1959 and it continued to do so to the end. In 1960 a quarterly dividend was first paid on the common stock in the amount of 10¢ per share and this was gradually increased to 80¢ per share per annum, until in April of 1965 the extraordinary decision was taken to pay a quarterly dividend of 25¢. The other preference shares were treated for dividend purposes like common shares and comprised the following: 15,000 first preference shares with a par value of \$20, each redeemable at \$22 and convertible into one common share each, of which 14,515 were issued and fully paid, the remainder having been converted; 200,000 second preference shares with a par value of \$24 each and a maximum dividend rate of 7% per annum, redeemable at a price not to exceed 112% of the amount paid up, divided into 190,000 series A and 10,000 series B 6% cumulative shares, convertible into 1.153 common shares per second preference share and redeemable at varying percentages above par, all issued and fully paid; 60,000 third preference shares without par value, participating and convertible into one common share each of which 10,000 had been issued and paid for; 1,015,000 common shares without nominal or par value of which 699,718 were outstanding; all with an ascribed value of \$14,455,087. On this capital stock which was identical in authorization and issue, with minor variations of distribution, with that outstanding at December 31, 1964, dividends in the sum of \$727,741 had been paid at 80¢. The receiver and manager's balance

⁵Exhibits 44-5.

sheet includes dividends payable in the amount of \$249,430, and another liability of \$5,010,000 in respect of the note on which default was made. The resulting deficit was \$4,358,268.

Two Changes in Accounting Practice: Branch Offices and Income Tax

The consistency of the accounting principles applied by the company to its financial statements year by year was subject to two modifications which should be noted. The first involved the treatment of branch development costs and may conveniently be looked at in connection with the expansion of the number of branch offices of Atlantic Acceptance and Atlantic Finance. This is illustrated on the chart at page 65 showing growth during each annual period and the final five and a half months ending on June 17, 1965, the increase in the total number of branches operated by both of these companies, broken down into the total number of individual office locations, which are again subdivided into the offices in which Atlantic Finance and Atlantic Acceptance operated alone, and the number of offices in which both companies shared premises. By the end of 1958, including the office of ~~Talbot Acceptance Company~~,^{*} there were five branch offices all in Ontario, at Hamilton (where the head office was also located), Ottawa, St. Catharines, St. Thomas and Kingston, and until 1961 it was the practice for Atlantic Finance to share premises with the parent company. In that year, without abandoning the joint offices, the company began to open Atlantic Finance offices in separate premises and the upward curve of this development keeps pace with that showing the total number of individual office locations. It was indeed in that year that the profitability and stable character of the small loans business was fully realized by C. P. Morgan. It can be seen at a glance that the period of most rapid expansion of the individual and consequently most expensive office locations took place in 1965 in the last months of Atlantic's solvency, at least in terms of acceleration, although the year 1963 produced more new locations than any other calendar period of the same length. In the short 1965 period it appears that 31 new branches were opened in separate premises in addition to the 31 Atlantic Acceptance branches and 71 Atlantic Finance branches shown as being in operation at the end of 1964,¹ and the records indicate that they were virtually all those of Atlantic Finance. The proliferation is remarkable in that it occurred at a time when every indicator pointed to the desirability of restricting Atlantic's lending because of foreseeable difficulty in the borrowing of funds.

It is a trite principle of business practice that the opening of branch offices at new locations presents the hazard of unprofitable operation

¹Exhibit 45.

over a period of two to three years when expenses are high in proportion to revenue, and there are accounting procedures designed to allocate this expense more realistically than by charging it against the operations of the year in which a branch is opened. Until 1961 Atlantic had followed the latter conservative practice but in the financial statements of that year, as the number and cost of opening new branches rapidly increased, provision was made, as may be seen from the condensed balance sheets, for showing deferred branch development costs as an asset after deduction of current revenue. A note to that financial statement which disclosed the adoption of the new practice indicates deferment over a three-year period of a portion of the development cost as chargeable to the operations of these later years, and constitutes a well-recognized accounting expedient, remarkable only in that it increased as an asset from \$87,032 in 1961 to \$450,158 at the end of 1964 and that the net income earned in 1961 of \$356,352 would have been reduced by \$41,775 had this provision not been made.

A more controversial adjustment to the consolidated accounts was made in 1963 and is reflected in the following note to the balance sheet of that year:²

"In 1963 the companies adopted the practice of reflecting in their statements of income only the income taxes payable for the year. If the prior years' practice had been followed in 1963, net income would have been reduced by \$246,257 with an amount of \$319,870 appearing on the balance sheet as 'accumulated income tax reductions applicable to future years'."

In their report, Wright, Erickson, Lee & Co. qualified by referring to this their opinion as to the accounts being prepared on a basis consistent with that of the preceding year, and some explanation of the change and its consequences is here necessary. Atlantic had in its earlier years decided on a schedule of depreciation for the equipment which it was entitled to depreciate, for the purpose of calculating its operating results for any given year, at a rate which was, as is often the case, lower than the rate permitted by the Department of National Revenue for income tax purposes. As a result it was able to show a higher profit than would have been recorded had it provided in its books for the largest amount allowable; yet, in order to lessen the incidence of tax, the company claimed for income tax purposes, if not in every case the maximum rate of depreciation, a substantially higher rate than had been provided for in the accounts. Since depreciation is exhaustible and since the exhaustion point for taxation will be reached on this basis earlier than for accounting purposes, it is the normal and prudent practice for accountants to provide for that period when there would be

²Exhibit 44.

less or no depreciation allowed by the taxing authorities in respect of assets which were still being depreciated as a matter of internal book-keeping by setting up a figure on the liability side of the balance sheet, in this case referred to as "accumulated income tax reductions applicable to future years". This figure in 1962 had been a mere \$73,614, but in 1963 it was of such proportions that the company deliberately took the risk of taking this provision for future taxes payable into surplus, or "retained earnings" as it is sometimes expressively described. Such a step has the advantage of increasing the figure which may be shown as profit at once, or in the near future, but inevitably exposes him who takes it to the possibility of compensating reductions in later years when more of his income is liable to tax and nothing has been set aside to meet it. If, however, an increase in his assets were of a sufficiently high order, as might be the case in what Mr. Orr described as a "crescendo" company, the curve of depreciation allowable for tax purposes might be arrested in its downward course so that it would never cross the curve of depreciation selected for internal accounting purposes. In fact Atlantic was justified by the harsh events of June, 1965 in abandoning what would otherwise have been a prudent course, but justified only in a way which could not be foreseen and would never have been acknowledged. Davidson has testified to Morgan's exasperation with his auditors for qualifying their report in relation to this change, but Lee, when he gave evidence before the Commission,³ could not recall any protest by Morgan on a point which in any event he would not have considered debatable. Davidson considered this action by Wright, Erickson, Lee & Co. the reason for Morgan agreeing to the firm's replacement by Deloitte, Plender, Haskins & Sells at that time, a course which had been urged upon him by Christie and Rooney since 1961.

Loan and Investment Position at June 17, 1965

1. ATLANTIC ACCEPTANCE CORPORATION LIMITED

Turning now to the sources and distribution of the accounts receivable of Atlantic Acceptance as at June 17, 1965, the next chart to be examined is Table 3¹ illustrating the company's loan and investment position at the date of receivership. The chart shows in schematic form, based upon figures available to Deloitte, Plender, Haskins & Sells and used to prepare their unaudited statement for the receiver and manager in August of 1965, the amounts receivable by way of loans made by the parent company direct to the public, and to its wholly-owned subsidiary companies and by them to the public, broken down into accounts receivable, unearned interest and amounts

³Evidence Volume 79.

¹Exhibit 547.

due to dealers, and the net amounts loaned after deducting interest and dealer reserves from the gross receivables.

The figures shown are rounded to thousands to save space; thus the two entries at the bottom of the chart, the allowance for bad debts and the net book value of consolidated accounts receivable, would reflect the position of those interim unaudited statements which, as has been seen, added some \$4,000,000 to the allowance for bad debts shown on the audited statement for 1964. It will be seen that Atlantic had two ways of lending its money, either directly to the public by discounting the notes and conditional sales contracts given to retailers and by making what are known as wholesale and industrial loans (an industrial division having been set up early in 1959), or by advancing sums to its subsidiaries which in turn lent them to the public in the same manner, subject to the variation in procedure inherent in the factoring process applied by Commodore Sales Acceptance Limited and Commodore Factors Limited and to that portion of the business of Atlantic Finance Corporation devoted to small loans to individual borrowers. The chart shows three columns consisting of accounts receivable, unearned interest and amounts due to dealers, and net amounts loaned; the accounts receivable show the aggregate amount of the notes payable including interest to the date of maturity; the unearned interest and amounts due to dealers include that proportion of the pre-computed interest deferred to future periods, together with what has been described as dealer reserves or hold-backs, according to the nature of the contract, payable to dealers who have produced the business if the notes in question are paid according to their tenor; thus the net amounts loaned shown in the right hand column represent the amounts payable which Atlantic and its subsidiaries would have received if all their debtors had paid them on July 17, 1965. Atlantic Acceptance Corporation was owed on this basis \$55,455,000 by debtors other than its own subsidiary companies who owed it \$86,046,000, not including the cost of the parent company's investment in those subsidiaries which is shown as \$1,984,000. The subsidiaries in turn were owed by borrowers, in respect of net amounts loaned, a total of \$91,162,000, an apparently favourable balance and not characteristic of the position in each subsidiary company illustrated.

The position of Atlantic Acceptance Corporation, as distinct from other component corporate parts of the Atlantic complex, can be shortly stated. It was the parent of all the other companies except Commodore Factors Limited of which it was the grandparent. It borrowed, with minor exceptions, all the money which was lent either directly to the public or to the subsidiary companies, in the order of 40% and 60% respectively of the whole, and in respect of that 40% loaned directly to the public it conducted a largely conventional finance business of the

type which is known as acceptance business, discounting paper given to retailers by purchasers of goods of which approximately one half were motor vehicles. As to the balance of its lending to the subsidiary companies, it is necessary to examine Table 3 in conjunction with other charts and tables.

2. ATLANTIC FINANCE CORPORATION LIMITED

The next chart is Table 4² and shows the loan and investment position of Atlantic Finance Corporation which had borrowed \$32,407,000 from Atlantic Acceptance and had in turn lent \$33,-639,000 to the public in the form of personal loans. The financial statement of 1958,³ because it shows comparative figures for 1957 which was the first full year of operation, certified by Wright, Erickson, Lee & Co., can conveniently be compared with Deloitte, Plender, Haskins & Sells' audited statement for 1964 and unaudited statement for June 17, 1965 to illustrate the growth of this company.⁴ At the end of 1957 total assets were approximately \$142,-300, in 1958 \$266,700, and by 1963 they had risen to \$14,500,-000, doubling in the course of the next year to \$29,151,000, the overwhelming preponderance being in notes and accounts receivable. The figures for these as at the end of 1964, and as at the date of receivership, take another leap upward from \$29,000,000 to \$35,000,-000, all almost entirely financed by loans from the parent company, an increase in the order of 25%. Among these receivables there were some 37,000 separate accounts relating to small loans, and the balance consisted of larger personal loans or loans of the acceptance type.

3. THE PREMIER FINANCE CORPORATION LIMITED

The second subsidiary shown on Table 3 is the Premier Finance Corporation Limited, the loan and investment position of which is illustrated by Table 5.⁵ Whereas Atlantic Finance Corporation had lent more to the public than it had received by way of loans from Atlantic Acceptance, here the position is reversed as at June 17, 1965. The explanation is generally that Premier Finance had ceased to lend in the field of soft goods, or indeed in any conventional acceptance field, in an active way during 1964, and had concentrated on the collection of its accounts receivable, with one exception involving loans to a company known as Racan Photo-Copy Corporation Limited; it had disposed of \$741,000 of these receivables to its sister company Standard Discount Corporation Limited. The price paid to O'Neill in

²Exhibit 548.

³Exhibit 549.

⁴Exhibits 550-1.

⁵Exhibit 552.

1959 was \$525,000 and, as well as being engaged as manager of the company thereafter, he was permitted to conduct out of Premier's office in Toronto his own operation known as O'Neill Finance Company. Premier's accounts were throughout audited by E. M. Sprackman & Co. or E. M. Sprackman, Siderson & Co., on whom the head auditors relied in reporting on the consolidated statements of Atlantic Acceptance, and the pro forma financial statement annexed to the purchase agreement between O'Neill and Atlantic Acceptance⁶ showed total assets of \$1,113,000 of which approximately \$1,000,000 was attributable to "budget accounts receivable" not verified by the auditors. Financial statements for the years 1959, 1963 and 1964 all certified by the Sprackman firm, and one for the period ending June 17, 1965 signed by Deloitte, Plender, Haskins & Sells,⁷ show that by 1963 the total assets had risen to \$8,550,000, had declined to \$4,700,000 in 1964 and as at the date of receivership were stated as \$696,394 after a massive allowance for bad debts of \$1,696,042. After acquisition the type of business conducted by Premier Finance had changed from the exclusive financing of soft goods to include that of charge accounts at stores, and in no particular more markedly than in its loans to the Racan Company. Premier Finance shares with Commodore Sales Acceptance the distinction, if such it is, of providing year after year, and in the face of the plainest evidence of financial irresponsibility and technical incompetence, a war chest to Racan Photo-Copy Corporation for the speculative operations of Elias Yassin Rabbiah. It is sufficient to notice here that the records of Premier Finance show an opening advance in December, 1961 of somewhat over \$150,000 and a steadily rising debit balance against Racan, fortified by the accrual of interest, until it reached a high point at the end of 1964 of \$840,273, declining thereafter to \$788,500 at the date of receivership. The position then as represented on Table 5 shows loans by the parent company to Premier Finance amounting to nearly \$3,000,000 and amounts receivable by the latter made up of the \$741,000 due from Standard Discount Corporation, the balance being divided between the amount due from Racan and sales finance accounts receivable in the order of \$1,500,000 of which only some \$700,000 was considered recoverable, and certainly not the portion due from Racan.

4. STANDARD DISCOUNT CORPORATION LIMITED

The loan and investment position of Standard Discount Corporation Limited at the date of receivership is illustrated by Table 6.⁸ This company's source of funds was the parent company to the

⁶Exhibit 553.

⁷Exhibits 554-7.

⁸Exhibit 559.

extent of \$2,264,000 and Premier Finance, by the transfer above referred to, in the amount of \$741,000. The net amount loaned to the public by way of sales finance accounts was \$3,864,000. The company, acquired by Atlantic in October 1961 had, according to its financial statement for the six months ending December 31, 1961, audited by Stone, Conway, Anger & Stone,⁹ total assets of some \$1,590,000 with accounts receivable of \$1,440,000. By the end of 1964¹⁰ its total assets, also largely accounts receivable, had risen to \$3,237,000 and the interim balance sheet as at June 17, 1965, reported on by the Stone, Conway firm without expression of opinion, shows assets of approximately \$4,000,000. Its operations appear to have been profitable throughout and its growth on a modest scale, its business being with dealers in soft goods in the Toronto area and consisting of a large number of small accounts.

5. ATLANTIC ACCEPTANCE (TORONTO) LIMITED

Atlantic Acceptance (Toronto) Limited, as already indicated, was incorporated to hold mortgages of real estate and to provide that service for other members of the complex not authorized to do so by their letters patent. Its simple loan and investment position as at June 17, 1965 appears on Table 7.¹¹ At this point Atlantic had advanced to it \$293,000 and it in turn had advanced \$302,000 by way of loans secured by mortgages. Its auditors were Wright, Erickson, Lee & Co. and Deloitte, Plender & Co. and the financial statements for the periods ending December 31, 1960,¹² to December 31, 1964,¹³ together with the unaudited statement for June 17, 1965,¹⁴ indicate that after incorporation it took over from other companies in the Atlantic group receivables in the amount of approximately \$100,000, rising to \$290,800 and showing a small annual profit or loss on operations during the period of its active life.

6. PAY AS YOU STUDY PLAN LIMITED, AND

7. CONCOURSE AGENCIES LIMITED

Pay As You Study Plan and Concourse Agencies Limited had their accounts audited by the firm of Walton, Wagman & Co., of which a great deal will be heard hereafter, up to and including the audit for 1963 when this responsibility was taken over by Deloitte, Plender,

⁹Exhibit 560.

¹⁰Exhibit 561.

¹¹Exhibit 563.

¹²Exhibit 564.

¹³Exhibit 565.

¹⁴Exhibit 566.

Haskins & Sells with the audit of the parent company and those subsidiaries formerly entrusted to Wright, Erickson, Lee & Co. They thus constituted the only subsidiaries of the consolidation which were added to the engagement of the head auditors at that time, and indeed added very little. The loan and investment chart of Pay As You Study Plan, Table 8,¹⁵ shows as at June 17, 1965 \$30,000 payable to Atlantic Acceptance by this company and \$3,000 receivable by it from borrowers, and the financial statements indicate a decline in these receivables from \$34,000 at the end of 1962 to a net figure of \$500, after allowance for bad debts of \$2,500 at the date of receivership and a deficit of \$28,000. Its operations were never more than modest and never profitable. Concourse Agencies Limited, formerly Humbertown Services Limited, changed its type of operation from that of financing purchases made with credit cards at the time when it changed its name in 1960 to that of a collection agency for other companies in the Atlantic group. Its loan and investment chart at Table 9¹⁶ shows a rounded figure of \$1,000 advanced by the parent company (actually \$772) with issued capital of \$3 and a deficit of \$775.

Loan and Investment Position and Financial Statements of Adelaide Street Subsidiaries

There now fall to be considered, as the remaining companies in the Atlantic group, the loan and investment positions of Commodore Sales Acceptance Limited, Commodore Factors Limited and Adelaide Acceptance Limited on a basis consistent with what has gone before, but also, because of their peculiar importance at all points to any study of the rise and fall of Atlantic Acceptance, in somewhat more detail. It will be recalled that these companies conducted their operations in the executive offices of Atlantic in Toronto under the eye and hand of C. P. Morgan. It will also be recalled that it was in relation to the files of Commodore Sales Acceptance that Morgan lost his composure, usually under precise control, when he first revealed to Medland and Sheeline the extent and quality of the loans made by this company in the week after Atlantic's default. In addition to their habitation, the three companies had one other salient characteristic in common; their accounts were audited, and their financial statements reported on by Walton, Wagman & Co. of which the partners were William Louis Walton, C.A., a licensed trustee in bankruptcy, and Harry Wagman, C.A. This firm was known as Wagman, Fruitman & Lando after Walton's trial and conviction for income tax fraud in 1964, an event which

¹⁵Exhibit 567.

¹⁶Exhibit 571.

was foreshadowed in the later months of 1963. Of the three companies, Commodore Sales Acceptance was of the greatest consequence and should be examined first.

1. COMMODORE SALES ACCEPTANCE LIMITED

The creation of Commodore Sales Acceptance by C. P. Morgan as a vehicle for factoring the accounts receivable of Commodore Portable Typewriter Limited, to become by change of name Commodore Business Machines (Canada) Limited and its acquisition by Atlantic Acceptance in two stages, first in 1959 as to 51% of its common shares, then by an elaborate if not complicated process as to the remaining 49% in 1961 is a story in itself and must be reserved for a later section of this report. An exhaustive examination of its accounts receivable into which so much Atlantic Acceptance money flowed and evaporated, and the accounting methods by which this company was presented to its directors, all of whom were directors of Atlantic, as a healthy and profitable subsidiary, was made by the Commission's accountants and will also be referred to again. The loan and investment position at the date of receivership is shown on Table 10¹ and is more complex than its predecessors. The company's business, which was factoring accounts receivable and the making of large loans of the industrial type, was sustained, with the exception of bank advances of some \$600,000, entirely by the funds of the parent company to which it owed \$34,155,000. It had advanced to the borrowers shown on Table 10 funds of which the net amount loaned was \$35,896,000.

A more detailed record of this company's loans is appended under the heading "Commodore Sales Acceptance Limited—History of Accounts Receivable from Inception in 1959 to June 17, 1965" as Table 11.² These figures, which show the position at the end of each year of the company's history up to and including the date of receivership, are expressed in net amounts receivable after deducting holdbacks to dealers and unearned interest deferred to subsequent years. They do not, of course, reveal amounts which may have been borrowed and repaid within the confines of any one calendar year or the broken period of 1965. The loan and investment chart has certain peculiarities, not encountered in the preceding charts, in that individual borrowers are distinguished by large circles compared with the squares indicating corporate borrowers; three squares, assigned first to the "Little Scot Stores" consisting of ten companies, second to Bond & Cosman Limited, Trans Canada Millinery Limited and Mart Utilities Limited, and third to Chatsworth Enterprises Limited and Kelton Ultrasonics

¹Exhibit 573.

²Exhibit 578.

Limited, are all surrounded by a dotted line, the enclosure representing "Groship Companies", viz. companies created and managed by one Gerald Groship. The Little Scot group of ten companies comprise Celtic Discount Stores Limited, Golburn Discount Sales Limited, Jumbo Discount Sales Limited, Preston Lake Discount Stores Limited, Province-Wide Stores Limited, Saxon Discount Stores Limited, Anglo Discount Sales Limited, Spadina Discount Stores Limited, Highlight Distributors Limited and Mart Buying Services Limited. Then there is a block of "other accounts receivable" (under \$10,000) for which some \$51,000 was outstanding. Two notes appear at the bottom of this chart, one in respect of A. J. & E. Goldberg Bros. Limited from which \$490,000 was receivable, indicating that Commodore Sales Acceptance apparently owned the company at the time of receivership, and another in respect of a loan of \$62,000 to W. C. Dymond which was secured by a mortgage of land already foreclosed. Turning to Table 11, the historical progression of the accounts receivable, certain salient and significant figures can be noticed in the right-hand column of the schedule dealing with the position at June 17, 1965, showing that Aurora Leasing Corporation owed Commodore Sales Acceptance roughly \$10,009,000, Dalite Corporation (Canada) Limited \$4,700,000, D.H.I. Limited \$4,503,000, the Groship group of companies \$3,149,000, Cimcony of Canada Limited \$1,945,000, Pro Musica Limited \$1,213,000 and, in a special category of its own, as will be seen, Hugo Oppenheim und Sohn Nachfolger Berlin Privatbank \$3,821,000, amounting to more than half the total accounts receivable shown of roughly \$35,900,000. Smaller, but none the less considerable advances outstanding at the date of receivership had been made to American-Marsh Pumps (Canada) Limited for approximately \$687,000, General Lawn Spray Limited \$689,000, Trans Commercial Acceptance Limited \$923,000, Masco Construction Company Limited \$817,000, American Automation Limited \$454,000, Furniture Sales Limited \$375,000, Racan Photo-Copy Corporation Limited \$461,000 and Valley Farm and Enterprises Limited \$118,000, which last represented a progressive decline from an amount of \$157,500 first recorded at the year-end December 31, 1961. A loan to L.B.H. Management Limited of approximately \$548,000 first appears in the column devoted to the first half of 1965. The amount receivable from Commodore Business Machines (Canada) Limited, being the largest single account at the end of 1959, in the amount of \$320,574, increases at the end of 1960 to \$675,856 at the end of 1961 to \$954,553, declines markedly by the end of 1962 to \$333,563, rises again to \$444,334, thereafter decreasing at the end of 1964 to \$359,170 and as at the date of receivership is \$302,265. All of these loans and many others require further examination in the proper place.

The condensed comparative balance sheets and income statements for Commodore Sales Acceptance are shown on Table 12.³ It displays in columnar form the main features of the annual financial statements of the company for the years 1959 to 1964 inclusive and that portion of the year 1965 to the date of the receiving order, and the figures are taken from these statements without verification by the Commission's accountants. The assets grew rapidly from \$888,000 at the end of 1959 to \$36,531,000 at June 17, 1965, doubling or more than doubling annually until the end of 1963, in which year there was a comparatively modest increase over the figure recorded at the end of 1962 of some 25%, but reaching in the year 1964 an aggregate figure of \$31,028,099. Another \$6,000,000 in accounts receivable was added in the first half of 1965. The liabilities side of the balance sheet shows, in respect of demand notes payable, debentures and shareholders' equity, that all of the company's funds after the spring of 1961 were supplied by Atlantic with the exception of loans extended by the Bank of Nova Scotia. Two exceptions to this one-way flow may be noted; an asset shown as "notes receivable—Atlantic Acceptance", balanced by a bank loan liability, in the amount of \$1,077,500 in 1962, and an asset of \$750,000 at June 17, 1965, balanced by the same liability recorded as at December 31, 1964, the latter contributing to Atlantic's bank lines by being borrowed by Commodore Sales Acceptance and lent to Atlantic, secured by a 6% note.

The income statement shows a remarkable increase in interest earned and profitability from year to year, except in 1962 when the gross earnings increased proportionately less and financial advisory fees of \$134,667 were higher than in any other year. A small profit in that year of \$2,035 was apparently adjusted in 1963 by reducing the financial advisory fees and maintaining the provision for doubtful accounts at virtually the same figure provided the year before, in the face of earned and profitability from year to year, except in 1962 when the

2. COMMODORE FACTORS LIMITED

Commodore Sales Acceptance had, as a wholly-owned subsidiary company, Commodore Factors Limited, which was incorporated in the State of New York some three months before Atlantic Acceptance bought out the minority interest in its parent company in May, 1961. Its function was to provide the same service for customers in the United States as Commodore Sales Acceptance provided in Canada. The chart of its loan and investment position, Table 13,⁴ shows total ownership by Commodore Sales Acceptance, but the flow of funds

³Exhibit 577.

⁴Exhibit 579.

comes directly from the grandparent Atlantic Acceptance amounting to \$9,195,000 U.S. at the date of receivership, and the sum of \$443,000 U.S. is receivable from Commodore Factors Limited by Commodore Business Machines (Canada) Limited which in turn, as remarked before, owed Commodore Sales Acceptance \$302,000 in Canadian funds. The accounts receivable are far fewer than in the case of Commodore Sales Acceptance, as may be seen in the "history of accounts receivable" at Table 14,⁵ being only half-a-dozen in number at the end of 1961, and only twelve of any significance at the date of receivership, but at this later date they amounted to over \$10,000,000 in Canadian funds. As will be seen hereafter this creditor position of Commodore Business Machines is directly linked to the appearance of Baronet Associates Inc. as a debtor for over \$1,000,000 in 1964 and 1965, as is also its declining indebtedness to Commodore Sales Acceptance and the ascending loans to Trans Commercial Acceptance Limited shown on Table 12. General Spray Service Inc., Sprayfoil Corporation Inc. and Turf Kings Inc. are associated companies and together account for more than \$2,000,000; Manhattan Sound and Manhattan West Sound Corporations have loans in the order of nearly \$1,000,000 U.S., and these two companies must be grouped with Motion Picture Security Corporation with a loan outstanding of roughly \$2,819,000 U.S. at the date of receivership. A similar connection exists between Jacroy Canada Limited and Symphony Paint Company which accounts for over \$1,500,000, and again between Nevil Enterprises Inc., Nevil Plastics Inc. and Tools and Molds Inc., the vehicles of one Neville Levinson of Buffalo, N.Y. and Toronto, which among them account for almost \$1,500,000 of the receivables in the final stage. Commodore Factors therefore made large factoring and industrial loans primarily to a small number of associated companies, all in United States funds, during its short life of a little over four years. Its condensed comparative balance sheets and income statements at Table 15,⁶ which are, with the exception of the figures for 1965, expressed in Canadian funds, have most features in common with those of Commodore Sales Acceptance, showing its funds almost entirely advanced by Atlantic, secured by demand notes on which interest does not seem to have been paid after 1962, with assets almost entirely made up of accounts receivable rising steadily in recorded value from one and a half to seven and a half millions between 1961 and 1964 in Canadian funds, and then very sharply rising to \$10,127,000 in the first half of 1965, an increase to which all accounts contribute, but particularly that of Motion Picture Security Corporation which acted as a conduit for a

⁵Exhibit 581.

⁶Exhibit 580.

loan of Atlantic Acceptance funds through Aurora Leasing Corporation to Lambert & Co. A comparison of the figures attributed to net income earned by Commodore Sales Acceptance and Commodore Factors suggests that the latter was allowed to be apparently more profitable than its parent company, the interest earned being much greater than that payable, and a modest \$15,000 for financial advisory fees exigible only in 1962. The dealers' interest shown as receivable at the end of 1961, 1962 and 1963 on Exhibit 581 is an oddity which appears to be accrual of interest not allocated to individual loans, the practice of accumulating which ceased in 1964.

3. ADELAIDE ACCEPTANCE LIMITED

Turning to the third and last of the companies subsidiary to Atlantic Acceptance which were operated from the executive offices at 100 Adelaide Street West, the loan and investment chart for Adelaide Acceptance Limited is found at Table 16.⁷ It will be recalled that this company was originally named Crest Acceptance Corporation Limited and incorporated as a private company in Ontario in 1958. It became wholly-owned by Atlantic in March of 1962 and its name changed in the following month. As at June 17, 1965, its liability to Atlantic was \$4,056,000 in round figures and the net amounts loaned by it in respect of twenty-five accounts receivable was \$4,390,000, as set out in detail on Table 17⁸ which shows the position from year to year between the dates March 31, 1962 and June 17, 1965. The principal loan, and that of longest duration, was made to Aurora Leasing Corporation first of all in March 1962, the month of Adelaide's acquisition by Atlantic, in the amount of \$654,000, which by the end of the year had risen to more than \$1,200,000 and by the end of 1963 to \$2,467,000, thereafter declining to \$2,145,000, its position at June 17, 1965. Adelaide Acceptance also started its career in the Atlantic group with an advance to Commodore Sales Acceptance, its fellow-subsubsidiary, of \$480,000 no longer outstanding by the end of 1964. Nevil Enterprises Inc. and Nevil Plastics Limited appear as borrowers beginning in 1962, with amounts of \$164,277 and \$391,487 respectively outstanding at the time of receivership. Two other large loans require notice; the first to Frederick's Department Store Limited shown at the end of 1962 as outstanding in the amount of \$604,500 and finally in June 1965 at \$634,000; the second to Valley Farm and Enterprises Limited, fluctuating slightly between \$253,700 at the end of 1962 and \$254,500 in June 1965. The position of Dalite Corporation (Canada) Limited developed from a credit balance at the end of 1962

⁷Exhibit 582.

⁸Exhibit 584.

of \$66,000 to a debit balance of almost \$160,000 at the end of 1964, declining to \$125,800 owing at the time of receivership. D. W. Reid, in trust, appears as the recipient of \$300,000 in connection with a transaction described in Chapter VII.

The condensed comparative balance sheets and income statements for Adelaide Acceptance, Table 18,⁹ reflect the fact that the company was purchased with a view to carrying over an income tax loss of more than \$150,000 and show, under the column for operations in 1962, that it had a profit of \$153,603 with no provision for income tax, its income having been bolstered by a management fee received of \$110,000. In the same year it paid a management fee to Atlantic Acceptance of \$45,442 and in the following year, in which its earnings attracted tax, this fee was increased to \$150,000 reducing the net income earned to \$34,000. No other management fees are recorded as received or paid and the profit after taxes in 1964 was a mere \$11,361. Other than cash all the assets were receivables and the source of funds was entirely Atlantic Acceptance, there being no bank loans recorded in any event at the year-ends. The company apparently made loans large and small to a number of companies and individuals without the intervention of dealers, on various types of security, or none at all.

These three subsidiary companies, Commodore Sales Acceptance, Commodore Factors and Adelaide Acceptance, had certain features in common other than ownership by Atlantic Acceptance and dependence upon it for the money which they lent. Commodore Sales Acceptance, after being incorporated by a solicitor by the name of Louis W. Spencer, had C. P. Morgan as a director from March 6, 1959 to June 18, 1965. Alan T. Christie joined the board on August 24, 1960 and resigned on June 24, 1965. A. C. Rooney joined the same day and resigned on the day on which he left the board of Atlantic Acceptance, June 30, 1964. W. P. Gregory was also elected on August 24, 1960 and resigned on June 24, 1965. After the acquisition of the minority interest in this company by Atlantic Acceptance, J. A. Medland, W. H. Wallace and W. H. Martin, the remaining directors of Atlantic, became directors of Commodore Sales, and Paul C. Sheeline succeeded Rooney on June 30, 1964. Commodore Factors Limited was incorporated through the agency of a New York City lawyer by the name of Benjamin H. Orem-land and had a board of three, composed of Morgan, Christie and Rooney, the last succeeded by David Davidson. Adelaide Acceptance had the same board, subject to the same replacement, from the date of acquisition by Atlantic until the end. In the persons of Christie, Rooney, Wallace and Sheeline, the Lambert interests were solidly, and in the case of Commodore Factors and Adelaide Acceptance decisively represented. The three companies had the same auditors, either Walton, Wagman &

⁹Exhibit 583.

Co. or the successor firm Wagman, Fruitman & Lando, and Harry Wagman, personally and through a company owned by Morgan, Walton and Wagman, Chartered Management Consultants (of Canada) Limited, played a leading part under Morgan's direction in their management. The three companies had the same solicitors, a Toronto firm known variously as Solomon & Samuel, Solomon, Samuel & Singer, Solomon & Singer, and Solomon, Singer & Rosen, the principals of which were Carl M. Solomon throughout, David M. Samuel, who after leaving the firm continued to act on occasion, and Irwin Singer. Oremland was a director of and counsel for Exquisite Form Industries Inc. the parent company of Exquisite Form Brassiere (Canada) Limited of which H. L. Solomon, Carl M. Solomon's brother, is president, and will appear again, as will Carl M. Solomon and his partners, in transactions which it is reasonable to assume Messrs. Sullivan & Cromwell and Osler, Hoskin & Harcourt knew nothing about.

The nature of the business carried on by Atlantic Acceptance and its subsidiaries is illustrated by the following table reproduced from the receiver and manager's "Memorandum as to Initial Award of Compensation", dated November 17, 1966 and prepared for submission to the Supreme Court of Ontario.¹⁰ It must be borne in mind that the right-hand column, "notes receivable", represents the net amount after deduction of unearned interest and the estimated allowance for possible loss as at June 17, 1965:

<i>Company</i>	<i>No. of Accounts</i>	<i>Notes Receivable</i>
Atlantic Acceptance Corporation Limited	34,184	\$ 53,282,257
Atlantic Finance Corporation Limited	54,477	33,167,133
Commodore Sales Acceptance Limited	63	35,560,344
Commodore Factors Limited	17	10,707,401
Adelaide Acceptance Limited	16	4,295,612
Standard Discount Corporation Limited	70,714	3,683,083
The Premier Finance Corporation Limited	6,997	666,849
Atlantic Acceptance (Toronto) Limited	} 108	290,364
Pay As You Study Plan Limited		
Concourse Agencies Limited		
	<u>166,576</u>	<u>\$141,653,043</u>

Two things are immediately apparent; first that well over a third of the notes, something in the order of \$50,000,000, were receivable by Commodore Sales Acceptance, Commodore Factors and Adelaide Acceptance; the second is the remarkably small number of accounts in

¹⁰Appendix F, (Exhibit 4715).

which these notes were held compared to those of the other active companies. The comparison is somewhat distorted in that the factoring process itself may involve the administration of a large number of accounts receivable bought or pledged, but nevertheless it is very striking.

Loan, Lease and Investment Position and Financial Statements of Aurora Leasing Corporation

It is necessary to refer at this stage, on a comparable basis, to Aurora Leasing Corporation Limited, which, although not a subsidiary company of Atlantic Acceptance, was indeed a satellite, and, as will appear, was under the effective control of C. P. Morgan and managed by members of his inner circle. It was incorporated as a public Dominion company in 1956 to carry on the business of leasing equipment, but from October, 1960 its operations were conducted from the office of Walton, Wagman & Co. The methods used to bring it into Atlantic orbit will be examined in the next chapter but, as documents already referred to have indicated, it had by June 17, 1965 been advanced upwards of \$12,000,000 by Commodore Sales Acceptance and Adelaide Acceptance from funds supplied by their parent company. A chart illustrating the loan and investment position—described thereon as “loan, lease and investment position”—is Table 19.¹ It is so described because the company's original business was that of leasing equipment owned by it, secured by rental agreements over a period of months or years, and it only got by degrees into the business of making industrial loans of the type made by Atlantic and the Adelaide Street group to the point where this activity easily predominated. The chart shows sources of funds advanced to Aurora Leasing coming from Commodore Sales Acceptance to the extent of some \$10,000,000 and from Adelaide Acceptance of \$2,145,000. Aurora also borrowed from British Mortgage & Trust Company of Stratford, to which at June 17, 1965 it owed \$1,860,000 in round figures. By that date Aurora had net amounts of \$15,048,000 in the aggregate owed to it through thirty-nine accounts shown on the chart, the history of which, and of other accounts receivable over the period 1960 to 1965, is shown on Table 20.² This should be compared to the loan, lease and investment chart with some caution because its right-hand column shows the accounts receivable as at July 30, 1965 which was the date of Aurora's bankruptcy. The first account, showing an amount due July 30, 1965 of \$228,073 from Atlantic Acceptance and Atlantic Finance, refers to the rental of furniture by those companies, and there are other identifiable term accounts in respect of leases such as that due from Allied

¹Exhibit 585.

²Exhibit 587.

Towers Merchants Limited in the amount of \$423,892; but reference to the condensed comparative balance sheets and income statements at Table 21³ will show that term accounts receivable, which roughly correspond to the asset shown as "equipment" owned by the company and leased, is a small part of the receivables at the date of bankruptcy which are largely notes and mortgages. Soon after the change of ownership in 1960 when Aurora became associated with the Atlantic group of companies its business, which was supposed to be the leasing of equipment, noticeably changed, term accounts outstanding being \$670,000 compared with \$256,000 in notes and mortgages in 1960, and at July 30, 1965 only \$1,200,000 compared to \$13,820,000.

Among the large loans outstanding at July 30 were \$2,209,000 owing by Evermac Office Equipment Company Limited and \$1,880,000 by Freeport International Company Limited, a Bahamian company, both recorded for the first time at the end of 1964; \$1,188,000 by Associated Canadian Holdings Limited, a company in which Morgan and Wagman participated with Jack Tramiel and Manfred Kapp of Commodore Business Machines; \$1,237,000 by Conarm Developments Limited, an Ottawa land development company and \$1,137,500 by Belfield Investments Limited, both of which were heavily indebted to British Mortgage & Trust Company, the security of which ranked ahead of Aurora's. Frederick's Department Store Limited, owing finally \$476,000, may be grouped with Treasure Island Properties Limited owing \$1,520,000, Treasure Island Gardens Limited \$51,500 and D. W. Reid re White Oaks Shopping Centre \$384,600, all being part of the same enterprise to which Aurora had advanced over \$2,400,000. The amounts receivable from Valley Farm and Enterprises Limited of \$903,000, Valley Music Company Limited which disappears from the trial balance after the year-end in 1962, and Ottawa Valley Amusements Limited, outstanding at the date of bankruptcy in the amount of \$118,300 will later be considered together. Charcoal Supply & Sales Limited and its parent, Arcan Corporation Limited, at July 30, 1965 were indebted to Aurora in the aggregate amount of \$120,000. Dallas Holdings Limited owing \$678,000, N.G.K. Investments Limited, one of five original borrowers from Aurora as at December 31, 1960, \$166,800, Don Mills \$75,000, Hebard Holdings Limited \$53,000 and Five Wheels Limited \$104,000 were, in common with other companies indebted to the true subsidiaries of Atlantic Acceptance, owned wholly or in part by C. P. Morgan and various associates. Don Mills was not a corporation but a *nom-de-guerre*, where necessary supported by the signatures of Tramiel and Kapp. It should be noted that Chisholm & Company and Cushing & Company are "street names" for Lambert & Company in New York. Several of the borrowers have been seen before

³Exhibit 586.

as owing money to Commodore Sales Acceptance, Commodore Factors or Adelaide Acceptance, including Cimcony of Canada Limited which appears to have been indebted to Aurora in the amount of \$570,574, though shown as owed by Cimcony Limited on the ledger account, General Spray Service Inc., Valley Farm and Enterprises Limited and Valley Music Company Limited, Corporate Plan Leasing Limited, John Belli Operations Limited, W. P. Gregory, Donald W. Reid, Frederick's Department Store Limited and London Lighthouse Investments Limited, this last being a company incorporated to hold the land upon which the head office of Atlantic Acceptance was built in the outskirts of Oakville. D.H.I. Limited, also a borrower from Commodore Sales Acceptance, finally owed Aurora \$727,773 and was affiliated with Mastino Developments Limited which was also a debtor for \$163,469. Those companies were the brain-children of Count Mastino Della Scala.

The condensed comparative statements for Aurora Leasing, Table 21, are made up of those certified by Walton, Wagman & Co. or Wagman, Fruitman & Lando for the years 1960 to 1964, the statement for that portion of 1965 up to the date of bankruptcy having been prepared by the Clarkson Company Limited as trustee in bankruptcy. It will be seen that the assets, consisting of term accounts and notes and mortgages receivable and the equipment owned by the company, rose from approximately \$1,230,000 at the end of 1960 to \$16,500,000 by mid-1965; and that the liabilities reflect the large borrowings from Commodore Sales Acceptance, Adelaide Acceptance and British Mortgage & Trust previously referred to, with contributions by shareholders and unsecured noteholders. The unsecured notes were convertible into shares and their decline from a figure of \$600,000 at the end of 1962 to \$529,000 ultimately is a measure of the conversion which took place during this period. After suffering a loss of \$150,000 during 1960 Aurora became apparently more profitable, particularly during 1964, when the net income earned rose from \$46,758 to \$173,590, a very marked increase having occurred in that year in the revenue received from both rentals and interest on loans. The item for management fees paid requires the comment that in 1960 Aurora was deriving them from a subsidiary company by the name of Mavety Film Delivery Limited which was thereafter purchased by N.G.K. Investments Limited, and Aurora, apparently losing its expertise with its subsidiary company, commenced to pay fees to Chartered Management Consultants which, as previously observed, operated as an adjunct to the office of Walton, Wagman & Co. and was owned by Morgan, Walton and Wagman. One of the penalties of Aurora's success in 1964 was the doubling of the management fee from \$12,000 to \$24,000.

As in the case of the charts and schedules of a similar nature illustrating the loan and investment position of the Atlantic subsidiaries

and the history of their accounts receivable, the same precautions must be observed in considering those applicable to Aurora in that they represent positions at a year-end, and do not reveal transactions which took place within the confines of any particular year, as did in fact happen in the case of Aurora during 1963. The financial statements for Aurora Leasing exhibit certain peculiarities which require further examination when the time comes to assess responsibility for the deceptive appearance created by these and other statements relating to companies in the Atlantic group. Suffice it to say that there is no indication of the establishment of any allowance for bad debts in the Aurora statements until those produced for the year 1964. The word "those" is used advisedly in that there were two separate statements⁴ prepared to reflect the position of the company at the end of that year, one dated March 9, 1965 containing an unqualified opinion, and the second dated July 8, 1965 containing a qualified report, referring to the "taking-over of accounts receivable by Commodore Sales Acceptance Limited pursuant to a general assignment of book debts and the accounts now under the control of the said creditor." Since the firm of Wagman, Fruitman & Lando who signed this report were also auditors in the same year for Commodore Sales Acceptance some doubt must be entertained as to the ingenuousness of this statement, but the circumstances under which it was made and indeed the validity of the assignment itself, which is still a matter for dispute, must await discussion in Chapter XVII.

Sources of Atlantic Funds

This chapter has thus far been concerned with the flow of funds from Atlantic Acceptance to its subsidiaries and the manner in which they were lent to the public, with particular emphasis upon the record of loans made by the subsidiary companies at 100 Adelaide Street West. The source of those funds, which, with the ability to manage them, are the whole substance of a sales finance company, must now be briefly considered. Some consideration has already been given in the preceding chapter to the early efforts of Atlantic Acceptance to obtain funds for the purpose of lending them profitably, and mention has been made previously in this of the issues of preference and common shares by which public participation was sought. The following list, showing the constituents of the shareholders' equity, appeared as Note 10 to the consolidated financial statements as at June 17, 1965 prepared without audit for the receiver and manager by Deloitte, Plender, Haskins & Sells:¹

⁴Exhibits 294-5.

¹Exhibit 545.

Capital Stock**Authorized:**

15,000 first preference shares, par value of \$20 each, redeemable at \$22 each, with fixed cumulative dividends of \$1.10 per annum and convertible into one common share each, of which 485 have been converted into common shares.

200,000 second preference shares, par value of \$24 each, issuable in series, cumulative, with a dividend rate not to exceed 7% per annum, and redeemable at a price not to exceed 112% of the amounts paid up thereon:

190,000 Series "A" and 10,000 Series "B" 6% cumulative, convertible into common shares at a price of \$20.81 per common share subject to adjustment (convertible into 1.153 common shares for each second preference share), redeemable at the following percentages of par value:

On or before September 30, 1967	110.42%
October 1, 1967 to September 30, 1972	106.25%
After September 30, 1972	102.09%

Sinking fund requirements for Series "B" shares are as follows:

<i>Period</i>	<i>Percentage of Outstanding Shares to be Redeemed Each Year</i>
On October 1, 1968 through 1972	2%
On October 1, 1973 through 1977	4%
On October 1, 1978 and subsequent years	5%

60,000 third preference shares without par value, participating, convertible into one common share each.

1,015,000 common shares without nominal or par value.

Issued and Fully Paid:

14,515 first preference shares	\$ 290,300
190,000 second preference shares—	
Series "A"	4,560,000
10,000 second preference shares—	
Series "B"	240,000
10,000 third preference shares	128,000
	<hr/>
	5,218,300
699,718 common shares	9,236,787
	<hr/>
	\$14,455,087

During 1965, 15,000 common shares were issued on conversion of 15,000 third preference shares.²

²Lists of registered shareholdings representing more than 1% of the stock in each category and of the directors of Atlantic Acceptance Corporation as certified by the transfer agent, the Eastern & Chartered Trust Company, appear at Appendix D (Exhibits 164-5).

STRUCTURE AND GROWTH

Moneys obtainable by the sale of the company's shares and by borrowings from chartered banks were not sufficient, and can never be sufficient to meet the needs of an expanding finance company, and much depended in the early years upon Atlantic being able to maintain a record of paying dividends on its preference shares for five consecutive years to permit it to sell secured obligations of a type which would qualify for investment by insurance and trust companies, the lending of which was subject to statutory provisions in respect of the borrower's financial stability, and by other investors not so regulated but who imposed standards of their own.

The unaudited consolidated balance sheet as at June 17, 1965, excluding its voluminous notes, is shown below:³

ASSETS

Cash on hand	\$ 1,320,866
Notes and Accounts Receivable—less allowance for doubtful accounts, \$6,353,885	149,188,872
Income Taxes Recoverable	556,321
Prepaid Expenses and other assets	963,385
Equipment and leasehold improvements—at cost less accumulated depreciation and amortization, \$158,495	203,482
Unamortized long-term debt financing expenses	1,080,497
Unamortized cost of developing new branches	494,385
Unamortized cost of investment in subsidiary companies in excess of book value at date of acquisition	1,002,118
Total	<u>\$154,809,926</u>

LIABILITIES

Bank overdraft	\$ 969,869
Accounts payable and accrued charges	1,075,306
Dividends payable	249,430
Amounts due to dealers pending collection of accounts	1,388,528
Income Taxes	470,306
Other liabilities	5,010,000
Senior debt	106,863,340
Subordinated debt	16,798,820
Junior subordinated debt	4,351,679
	<u>137,177,278</u>
Unearned interest	7,535,829
Shareholders' Equity:	
Capital stock	14,455,087
Deficit	4,358,268
Total shareholders' equity	<u>10,096,819</u>
Total	<u>\$154,809,926</u>

³Table 2.

It illustrates the proportion of total liabilities represented by senior, subordinated and junior subordinated debt in the amounts of \$106,863,340, \$16,798,820 and \$4,351,679 respectively and, under the entry "other liabilities", the \$5,000,000 owing to S.F.C.I.,⁴ now reinstated in the senior debt, for an aggregate of \$133,000,000. Particulars of the senior, subordinated and junior subordinated debt in terms of issues and amounts, not historical but shown as at the date of receivership, are to be found as Notes 7, 8 and 9 to these statements and are as follows:

7. SENIOR DEBT

The senior debt of the company, secured by an assignment of notes receivable and by a first floating charge on the assets of the company, consists of the following:

Bank advances:

Payable in Canadian currency.		\$ 3,250,000
Payable in U.S. currency.	\$ 4,000,000 U.S.	4,328,750
Total bank advances.		\$ 7,578,750

Short-term notes:

Payable in Canadian currency.		29,520,135
Payable in U.S. currency.	15,953,000 U.S.	17,264,138
Total short-term notes.		46,784,273

Medium-term notes (now due and payable—Note 1):

Payable in Canadian currency:

5%	\$ 100,000
5 $\frac{3}{8}$ %	140,000
5 $\frac{7}{8}$ %	700,000

Payable in U.S. currency:

5%	\$ 2,000,000 U.S.	2,164,375
5 $\frac{1}{4}$ %	2,000,000 U.S.	2,164,375

Total medium-term notes. \$ 5,268,750

Long-term notes (now due and payable—Note 1):

Payable in Canadian currency:

Series B—6 $\frac{1}{2}$ %	\$ 846,000
Series C—5 $\frac{3}{4}$ %	600,000
Series D—5 $\frac{3}{4}$ %	400,000
Series E—6 $\frac{1}{4}$ %	400,000
Series F—6 $\frac{1}{4}$ %	100,000
Series G—6 $\frac{1}{4}$ %	100,000
Series H—6%	700,000
Series I—6%	1,250,000
Series O—6 $\frac{1}{8}$ %	1,500,000

Payable in U.S. currency:

Series A—6 $\frac{1}{2}$ %	\$3,384,000 U.S.	3,662,122
Series J—6%	2,250,000 U.S.	2,434,922
Series K—6%	1,500,000 U.S.	1,623,281
Series L—6%	2,500,000 U.S.	2,705,469
Series M—6%	2,500,000 U.S.	2,705,469
Series N—5 $\frac{3}{4}$ %	7,500,000 U.S.	8,116,406
Series P—6%	1,500,000 U.S.	1,623,281
Series Q—6%	8,500,000 U.S.	9,198,594
Series R—5 $\frac{7}{8}$ %	5,460,000 U.S.	5,908,744

\$43,874,288

Redemption premium. 2,178,934

Total long-term notes. 46,053,222

Accrued interest. 1,178,345

Total senior debt. \$106,863,340

⁴*Royal Securities Corporation Limited v Montreal Trust Company* (1967) 2 O.R. 200.—The additional \$10,000 shown under the heading "Other liabilities" represents, according to information given to the Commission, liability in that amount to another noteholder whose circumstances were the same as S.F.C.I. and whose security was, on consent, subjected to the decision in this case.

STRUCTURE AND GROWTH

8. SUBORDINATED DEBT

The subordinated debt of the company consists of the following:

Payable in Canadian currency:

6%.....	\$ 23,500
6¼%.....	4,500,000

Payable in U.S. currency:

6½%.....	\$2,259,000 U.S.	2,434,921
6½%.....	782,000 U.S.	846,271
6%.....	3,478,000 U.S.	3,763,848
6¼%.....	2,340,000 U.S.	2,532,319
6¼%.....	2,000,000 U.S.	2,164,375

\$ 16,265,234

Redemption premium..... 401,270

Accrued interest..... 132,316

Total subordinated debt..... \$ 16,798,820

9. JUNIOR SUBORDINATED DEBT

The junior subordinated debt of the company consists of the following:

Payable in Canadian currency:

6½%.....	\$ 1,000,000
6¾%.....	400,000
6¾%.....	150,000

Payable in U.S. currency:

6%.....	\$2,000,000 U.S.	2,164,375
6½%.....	500,000 U.S.	541,094

4,255,469

Accrued interest..... 96,210

Total junior subordinated debt..... \$ 4,351,679

It will be seen that over a third of this debt consists of \$46,784,000 in short-term notes to which \$5,010,000 must be added. Four schedules in relation to the notes outstanding help to explain the incidence and history of this debt. The first, prepared by Atlantic, is Table 22⁵ and shows short-term secured notes outstanding as at June 30, 1965. Since none were paid after default on June 14, it may be regarded as representing the position at June 15, 1965, excluding notes in the amount of \$2,400,000 which were paid the previous day. The second is Table 23,⁶ also prepared by the company, and is a schedule of short-term secured notes outstanding, showing those maturing on demand and those maturing on June 14, up to and including June 25, 1965, this being one of similar documents supplied from time to time by McFadden to the Toronto-Dominion Bank. The third and fourth schedules were put into evidence by Mr. Abell⁷ when he first testified on March 7, 1966, but, being prepared for his report, may be more conveniently referred to as annexed to it in Chapter XIX where Table A shows Atlantic Acceptance Corporation short-term notes outstanding to the nearest thousand dollars, excluding Canadian bank loans but including loans from United States banks, and Table B shows Atlantic's short-term notes outstanding at month-ends, including bank loans, beginning with December 1963 and ending at June 14, 1965.

⁵Exhibit 588.

⁶Exhibit 591.

⁷Exhibits 589-90.

The maturities on June 15 amounted to \$6,908,000 of which \$3,550,000 were U.S. funds, and on June 16 to a total of \$2,100,000 of which \$1,000,000 were U.S. funds. The demand note position according to Table 22 was \$8,100,000, including \$650,000 U.S., and it may be observed that the aggregate figures given treat the United States dollar as equivalent to the Canadian. It should also be noted, in comparing the figures shown on the company's schedule with the Abell figures, that Table 22 shows the position after June 30 and the figures in Chapter XIX show it at June 14.

Table 22 shows not only the holders of the notes but the dealers through whom they were purchased when they were not purchased directly from the company, and here it must be emphasized that in the considerable history of Atlantic's operations in the money market this table only illustrates the position of short-term notes outstanding at one point in time and the maturities thereafter. The first entry, showing the Toronto-Dominion Bank holding a note for \$1,250,000 payable on demand, is that minimum lending by the bank required by the provisions of the trust deeds. The company's bank line with the Royal Bank of Canada is illustrated by two demand notes each for \$1,000,000 and the \$750,000 demand note held by Commodore Sales Acceptance represents the latter's line of credit with the Bank of Nova Scotia. The holdings by Great Northern Capital Corporation of demand notes in the aggregate amount of \$300,000, Home Smith Properties Limited of \$900,000, Humbria Limited of \$50,000 and Lambert & Co. with a note maturing August 18, 1965 for \$500,000 U.S. funds, represent the extent to which the owners of the controlling interest in Atlantic were involved with this type of obligation.

The Montreal Trust Company's definitive list as trustee of holders of short-term, medium-term and long-term notes, under the classifications of senior, subordinated and junior subordinated debt, was also entered in evidence,⁸ and since it is an important part of the record it is annexed as Appendix E. Here may be seen the imposing names of sophisticated investors from all parts of the continent, not including, of course, the names of those who held coupon notes. Here may also be seen, side by side with those of great corporations, the names of the registered holders of the \$4,500,000 6¼ % subordinated notes—first series, due June 1, 1983; their holdings were mostly in small amounts totalling \$869,000, many of them being in the order of \$1,000, \$2,000 and \$3,000, most of them being individuals and small estates resident in Canada. This being only part of the record of those small investors looking for a higher yield on a modest capital, and reassured in many cases as the Commission's correspondence file makes plain, by reputable dealers and bank managers, makes unpleasant but necessary reading. As the next chapter will establish, and is now widely known, their loss was absolute.

⁸Exhibit 99.

CHAPTER IV

The Loss

Estimate of Montreal Trust Company

The order made by Mr. Justice Parker on June 17, 1965 appointing Montreal Trust Company, trustee under the provisions of the various trust indentures securing Atlantic notes, as receiver and manager¹ was interlocutory in an action brought by it against Atlantic Acceptance Corporation. The defendant consented to the trustee's application and made over to the latter all its undertaking, property and assets, and all documents and records relating to them. Armed with the extensive authority thus obtained the receiver and manager took three preliminary steps. It engaged Deloitte, Plender, Haskins & Sells, the head auditors of Atlantic to make a quick review of the large loans made by the company and its subsidiaries using the available records at the head office in Oakville and at 100 Adelaide Street West in Toronto, their report on which was made on the evening of Friday, June 18. As a result of its disturbing nature, the Deloitte firm was asked to prepare the financial statements as at June 17 already discussed² and the task of examining the accounts receivable of Commodore Sales Acceptance, Commodore Factors and Adelaide Acceptance was given to Clarkson, Gordon & Co., chartered accountants, and its affiliated firm the Clarkson Company Limited, liquidators and licensed trustees in bankruptcy. Then it accepted the offer of General Acceptance Corporation of Allentown, Pa., which has been seen as first on the doorstep of the directors of Atlantic on the day after default among the several companies interested in acquiring its receivables, to make, in Mr. Haxton's words, "an operational audit" of the Atlantic companies and to report on their value as a going concern and with a view to acquisition. This report was delivered on July 14 through the medium of General Acceptance's

¹Exhibit 784.

²Exhibits 545-6.

subsidiary company, G.A.C. International Acceptance Corporation Limited,³ and the Deloitte report on August 10. With these, and with what had been gleaned by a large audit group organized by Clarksons, a report of the receiver and manager was prepared and printed in the course of a week, and issued over Mr. Haxton's signature on August 18. This model of concise expression was sent to the shareholders at the time and was put into evidence by Haxton when he was examined before the Commission on March 10, 1966.⁴ By August the trust company must have felt justified in making the decision to place Atlantic Acceptance in receivership. The G.A.C. International report had produced an abundance of disquieting information about the inadequacy of Atlantic's records, the quality of its loans and the defects of its management, ending with the staggering observation that the allowance for bad debts on a consolidated basis should be increased by more than ten times what was shown on the books to an estimated figure of \$38,484,000. Although General Acceptance's figures as given on the pro forma balance sheet attached to its report may have been unconsciously influenced by the bias of a prospective purchaser, the observations in detail which it contained on management procedures, records, security for loans and the like were pertinent and illuminating. Without doubt they contributed to the views expressed by Haxton in his testimony referred to hereafter.

The report of the receiver and manager of August 18 contained a statement of condition, as at June 17, 1965 of Atlantic Acceptance and its subsidiary companies and is reproduced overleaf. It is designed to show what net assets are available to creditors as compared with their claims, and the assets which are listed as to notes and accounts receivable allocated to the various companies together with cash on hand and other items are expressed under two heads; book value and estimated realizable value. It will be seen by comparing these two columns that although the book value of notes and accounts receivable are expressed as net, the receiver and manager by mid-August had reached, as a result of its own investigations and that of its agents, sombre conclusions about their real worth. The net receivables of Atlantic Acceptance of \$57,771,161 from loans made in the public sector, as distinct from those made to its subsidiaries, are further written down to \$54,000,000 as estimated realizable value. Atlantic Finance's reduction was only from \$35,199,946 to \$35,000,000 but the Commodore group of companies suffered drastically in this process. The net book value of the receivables of Commodore Sales Acceptance shown at \$35,719,586 plunged to \$13,500,000, of Commodore Factors from \$10,915,899 to \$3,000,000 and of Adelaide Acceptance from \$4,778,391 to a mere \$700,000. Those of Standard Discount with a

³Exhibit 785.

⁴Exhibit 786.

**ATLANTIC ACCEPTANCE CORPORATION
LIMITED**

and subsidiary companies

MONTREAL TRUST COMPANY

Receiver and Manager

STATEMENT OF CONDITION

as at June 17, 1965

ASSETS AVAILABLE TO CREDITORS	Book Value	Estimated Realizable Value
Cash on Hand.....	\$ 1,320,866	\$ 1,320,866
Notes and Accounts Receivable—net		
Atlantic Acceptance Corporation Limited...	\$57,771,161	54,000,000
Atlantic Finance Corporation Limited.....	35,199,946	35,000,000
Commodore Sales Acceptance Limited.....	35,719,586	13,500,000
Commodore Factors Limited.....	10,915,899	3,000,000
Adelaide Acceptance Limited.....	4,778,391	700,000
Standard Discount Corporation Limited....	3,816,200	2,800,000
Other Subsidiaries.....	987,689	980,000
Total Notes and Accounts Receivable		
—net.....	149,188,872	109,980,000
Income Tax Recoverable.....	556,321	556,321
Prepaid Expense and Other Assets.....	963,385	400,000
Equipment and Leasehold Improvements.....	203,482	100,000
Unamortized Costs and Expenses.....	2,577,000	—
Total Assets Available to Creditors....	154,809,926	112,357,187
LESS		
Unearned Interest.....	7,535,829	
Due to Dealers Pending Collection of Accounts.	1,388,528	8,924,357
		8,924,357
NET ASSETS AVAILABLE TO CREDITORS.....	145,885,569	103,432,830
Liabilities to Senior Noteholders (Note).....	106,863,340	106,863,340
Surplus (Deficiency).....	39,022,229	(3,430,510)
Liabilities to other creditors		
Subordinated Noteholders.....	16,798,820	
Junior Subordinated Noteholders.....	4,351,679	
Other Creditors (Note).....	7,774,911	28,925,410
		28,925,410
Surplus (Deficiency).....	\$ 10,096,819	\$ (32,355,920)

NOTE: Liabilities to Senior Noteholders does not include claims under litigation for reinstatement of Senior Notes totalling \$5,010,000.

book value of \$3,816,200 were estimated to realize \$2,800,000 and all the other subsidiaries, including Premier Finance which accounts for \$600,000 in both columns, declined slightly from \$987,689 to \$980,000. By comparison of the book value aggregate of \$149,188,872 with the estimated realizable value of \$109,980,000 there was a further reserve against losses, over and above that stated in the accounts, of \$39,200,000, roughly \$700,000 more than the figure forecast in the G.A.C. International report. The unamortized cost and expenses which consist of long-term debt financing expenses, the cost of developing new branches and the cost of investment in subsidiary companies in excess of book value at date of acquisition, are under the circumstances of the company's plight entirely written off, but income tax recoverable is shown in excess of \$550,000 arising out of overstatement of profit in previous

years and subsequent application of losses recognized in 1965. In sum \$112,357,187 appears as the estimated realizable value of the total assets available to creditors in comparison with the book value of \$154,809,926. From this amount was deducted the unearned interest and dealer's reserves in the amount of \$8,924,357, leaving net assets for creditors expected to be realized of \$103,432,830. This falls short of the liability to the senior noteholders of \$106,432,830, without adding in the principal and interest of the S.F.C.I. note, by \$3,430,510. After taking into account claims of other creditors including the subordinated and junior subordinated noteholders, an apparent surplus of \$10,000,000 at book value becomes a deficiency in net assets of \$32,355,920.

The statement of condition, in setting out the liabilities to creditors, does not include the interest of the shareholders which must be added to give a complete picture of the loss calculated on this basis at this time. Shareholders' equity varies in value from time to time, but for this purpose it must be taken from a period when Atlantic was ostensibly a going concern and not at a point, or after a point, when default had blighted its prospects. The most recent quarterly report of the company's position before default was for March 31, 1965 and valued the shareholders' equity at \$16,079,747, the addition of which raises the total deficit as estimated at June 17 to \$48,435,667. So much for the oft-repeated contentions of C. P. Morgan in the month of June that Atlantic had ample assets with which to meet all claims. The picture presented barely two months after the failure of his company to meet a small fraction of its obligations revealed that only the holders of senior secured notes, who by virtue of their security ranked ahead of all other creditors, could expect to recover anything at all. Although it appeared in mid-August that their recovery would be substantial it would certainly fall short of the amount of their claim, but how far short was not yet established. Nor did the holders of subordinated debt readily abandon the field. Their hopes rested on two contentions: any form of liquidation which would diminish the assets to the point where there was no residuum available to meet their claims was unjustified, and all notes issued after June 30, 1964 should be declared invalid, a theory of constructive default ante-dating by many months the event of June 14, 1965. Even the senior noteholders were loath to see the claims against the available assets increased by the reinstatement of the note held by S.F.C.I. which had been surrendered to and cancelled by the trustee, and, represented by Atlantic Sugar Refineries Limited, resisted the plaintiff's claim in *Royal Securities v. Montreal Trust* (*supra*). But the vicissitudes of the receivership are not within the scope of this report except as they affect the measurement of loss and recovery. They are briefly treated in the receiver and manager's memorandum as to initial award of compensation, prepared for submission to

THE LOSS

the Supreme Court of Ontario and dated November 17, 1966,⁵ which was entered in evidence before the Commission on May 30, 1967 and is annexed as Appendix F.

Evidence of J. G. Haxton

Mr. Haxton's evidence was given to the Commission some seven months after the appearance of the report which he signed on August 18, 1965,¹ and he was thus able to describe what in the course of the receivership had been revealed as to the nature and quality of Atlantic assets and to give a revised estimate of loss. The loans of Atlantic Acceptance Corporation in the public sector, with a net value of \$57,771,161, had been advanced in the gross amount of some \$60,500,000 from 35 offices across Canada in every province except Quebec in categories which are illustrated in percentage proportions as follows:²

Automobile	1) Retail	47%
	2) Wholesale	11
	3) Capital	3
Industrial and Heavy Equipment		7
Large Loans		14
Furniture and Appliances		7
Home Improvement		4
Mobile Homes		3
Livestock		3
Miscellaneous		1
		<hr/> <hr/> 100%

Apart from a tendency to lend on older cars than a prudent and, above all, a well-established sales finance company would be expected to regard as desirable security, that portion of the portfolio represented by retail automobile financing was conventional enough; but the wholesale loans made to automobile dealers to finance their inventories of new and used cars in the order of 11% exhibited many signs of improvidence. These loans, made to enable a dealer to purchase his stock-in-trade, require a specific repayment whenever a vehicle is sold, and the incidence of sales in which no remittance had been made to the lender, or sales "out-of-trust", was high, a situation well known to the company's officers at Oakville and in the branches. Their favourite solution was the easy-going expedient, in cases where dealers were in a precarious financial position, of creating a capital loan for the credit of the dealer's wholesale account, secured by a floating charge debenture or second or third mortgage, the value of which was generally questionable. The percentage of capital loans in the automobile category,

⁵Exhibit 4715.

¹Evidence Vol. 7.

²Exhibit 786.

although not high, amounted to some \$1,800,000 and embraced substantial "out-of-trust" situations, reflecting a significant preoccupation with the creation of assets regardless of the state of delinquency of individual loans. Large loans amounting to 14% of the whole were to an unusual extent outside the ambit of normal sales finance, with borrowers in apartment house and "motel" construction, and bowling alley and restaurant equipment businesses; a notable concentration of the apartment and motel loans was in the province of Alberta. Many of these were delinquent and were restored to currency by additional advances in the last ninety days before Atlantic's default. Home improvement lending was generally of poor quality, unduly devoted to financing the sale of aluminum siding as an embellishment of residential housing, an exploitation of a current fad by unscrupulous salesmen not unlike the promotion of the "Coronet" and "Premier" television sets of earlier days. The category of "mobile homes" refers to the large residential trailers much in use by the transient population of oil fields and mining camps, and the livestock loans must be further considered in relation to the affairs of Valley Farm and Enterprises. Generally speaking, in this area of Atlantic's lending there was a lack of credit information and a looseness of supervision at the head office, reflected and magnified at the branch level where managers had more than ordinary discretion to make loans on their own authority. Of the reservation for unearned interest and dealers' holdbacks shown as \$8,924,357 about \$4,500,000 was attributable to these Atlantic Acceptance loans. Haxton stated that as a result of closer examination of the individual accounts an even larger "factual reserve" would have to be conceded. His estimated realizable value, after seven months experience of these receivables, had been revised downward from \$54,000,000 to a maximum of \$43,600,000 and a minimum of \$40,300,000.

The lending of Atlantic Finance Corporation, conducted through 105 branches and having a net book value of \$35,199,946 at the date of receivership, was made up of some 53,800 accounts provided as follows:

Small loans (up to \$1,500)	53%	37,400	accounts
Large loans (over \$1,500)	39%	6,000	accounts
Furniture and Appliances	8%	10,400	accounts
	<u>100%</u>	<u>53,800</u>	<u>accounts</u>

This portfolio, as the statement of condition indicated, presented the best chance of recovery estimated to be \$35,000,000, the portion of the reserve for unearned interest attributable to it being \$2,000,000. From a net estimate of recovery of \$33,000,000 the receiver and manager contemplated a further reservation against loss, as a result of recent operating experience, of \$2,300,000 and an increase in the reserve for

THE LOSS

unearned interest as at December 31, 1965 of \$1,000,000, with the result that the high estimate of recovery at the time of Haxton's testimony appeared to be \$29,700,000 and the low \$29,000,000. Although Atlantic Finance's receivables had all along appeared to present the best chance of recovery by sale of the business as a going concern, certain weaknesses were discovered. Expansion in the order of fifty branches since the beginning of 1964 had infected this company's lending policy with the "crescendo" virus and much value had been sacrificed to volume. Loans, for instance, had been made by Atlantic Finance for the purpose of providing down-payments on automobiles financed by Atlantic Acceptance as to the balance with a consequent lack of buyer's equity. Loans of this type had been made to minors, as had loans to finance the purchase of popular musical instruments and chattels unacceptable as security to established sales finance companies. Atlantic Finance also had suffered in the case of loans over \$1,500 from the calculation of the cost of acquisition at 40% of the pre-computed interest, and particular care was taken to adjust the reserve for unearned interest with negotiations for sale in mind.

The most grievous and spectacular losses were, of course, sustained by the Adelaide Street subsidiaries of Atlantic and particularly by Commodore Sales Acceptance Limited and Commodore Factors Limited which C. P. Morgan operated with the assistance of Albert George Woolfrey and four clerks. Woolfrey, who testified before the Commission on five occasions, and whose name will appear hereafter from time to time, was a book-keeper brought to Toronto in the spring of 1960 from London, Ontario where he had been employed by a company called Mor-For Distributors Limited. The capital of this company consisted of three common shares issued for a consideration of \$1 each to C. P. Morgan, G. Warren Armstrong, who has been encountered before as first solicitor and an early shareholder of Atlantic Acceptance, and C. J. Foran of Fleetwood Financial Corporation Limited, Atlantic's original underwriter. It was in the business of selling imported china and distributing stainless steelwares and was incorporated in 1955 when Morgan was still an employee of International Silver Company of Canada, discounting thereafter its conditional sales contracts with Atlantic Acceptance at one of the latter's branch offices in Hamilton,³ and being from time to time in a position of delinquency on recourse. Morgan and Woolfrey worked under circumstances and by methods unknown to even the most senior members of the staff at Oakville and uncomprehended even by such a familiar of the executive offices as McFadden. Woolfrey spent his first months in the office of Walton, Wagman & Co. and at the elbow of Harry Wagman, before moving to 100 Adelaide Street West to become the "director of operations" of Commodore Sales Acceptance. From time to time employees of Chartered Management

³Evidence Volumes 43 and 102.

Consultants intervened to make "field audits" in the case of difficult accounts.

In the Adelaide Street subsidiaries the weaknesses and deficiencies noted in the supervision and control of loan accounts by Atlantic Acceptance and Atlantic Finance were exaggerated to the point of being grotesque. The prevailing inadequacy of records, especially of credit information, the dubious quality and frequent non-existence of security for advances made, the toleration of and, indeed, encouragement of delinquency on a large scale, concealed by the capitalization of arrears of interest and other less palatable activities of the management of these companies, must await fuller treatment and consideration when the rôle of their auditors and the operation of their accounts is examined in the light of the evidence of the Commission's accountants. Let it suffice that the receiver and manager was early aware of the existence of very large loans, unsecured or made on doubtful security, to corporations which no one had ever heard of with a particularly heavy concentration of some \$12,000,000 in loans made by Commodore Sales Acceptance and Adelaide Acceptance, either directly or through Aurora Leasing Corporation, to Dalite Corporation (Canada) Limited, Masco Construction Company Limited, L.B.H. Management Limited and ~~Daylite of Grand Bahama Limited~~,* all of whom had either a share interest in or substantial accounts receivable from Lucayan Beach Hotel and Development Limited and whose operations were bound up with that company's venture on Grand Bahama Island. Some sixteen bankruptcies attended its efforts to collect from borrowers in this connection. All of the fifteen Groship companies, owing \$3,176,639 to Commodore Sales Acceptance, were petitioned into bankruptcy for a total recovery of \$80,000. The same company's advances to Racan Photo-Copy Corporation of \$461,000 produced collections of only \$15,000. Bankruptcy action against Frederick's Department Store Limited in respect of a loan by Adelaide Acceptance of \$600,000 resulted in recovery of \$175,000. By March 1966 action taken by the Clarkson Company on behalf of the receiver and manager to collect the accounts receivable of the Adelaide Street group had recovered a total of \$3,560,000.

Nevertheless the Montreal Trust Company had high hopes for the future of Lucayan Beach Hotel, hopes which had formerly been expressed with almost passionate conviction by C. P. Morgan. The determination of the receiver and manager to continue its operation, and indeed to invest a further \$3,000,000 of Atlantic funds to acquire additional stock in Lucayan Beach Hotel and Development Limited in order to raise Atlantic's position from that of a minority shareholder to that of owner of some 93% of the voting stock of the company, is impressive evidence of how high they were. In consequence the estimates of recovery for the receivables of the Adelaide Street subsidiaries are subject to wide variation, a condition further aggravated by four cases of defective

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* Daylite of Grand Bahama Company Limited

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security, three affecting Commodore Sales Acceptance and one Adelaide Acceptance; the most serious of these involved an assignment of book debts given to the former by Aurora Leasing Corporation and jeopardized the recovery of some \$2,000,000. The estimated realizable value of the group's receivables, which in August 1965 appeared to be about \$17,200,000, was after the experience of seven months considered high, and should be offset in the event of adverse results, particularly in the Bahamas, by a low estimate of \$6,250,000. After the same period there was no reason to believe that the recovery from Standard Discount Corporations receivables would be any less than \$2,800,000, but the figure of \$980,000 assigned in the statement of condition for the other subsidiaries, including Premier Finance, might be conservatively lowered to \$600,000.

Estimate of Loss at March 10, 1966

To summarize the forecast of the receiver and manager at the time when he testified, Haxton produced and filed a statement¹ reproduced below which showed that the original \$48,435,667 deficiency illustrated in its report of August 18, 1965 should be restated as a potential loss of between \$50,000,000 and \$64,000,000.

Estimate of loss using the allowance for losses recorded by the Company at March 31, 1965, and the assets recorded on the unaudited balance sheet as at June 17, 1965.

(000's omitted)			
Assets as at June 17, 1965 per statement.....		\$154,810	
Add loss allowance per statement.....		6,354	
		161,164	
Less allowance for losses at March 31, 1965.....		2,976	
		\$158,188	
Deduct—unearned interest.....	\$7,536		
dealer's reserve.....	1,388	8,924	
Net Assets shown as available.....		\$149,264	
Recovery Estimated		<u>High</u>	<u>Low</u>
Other Assets per Statement			
Cash.....	\$1,321		
Tax.....	556		
Prepaid expense.....	400		
Equipment.....	100	\$ 2,377	\$ 2,377
Atlantic Acceptance Loans to public.....		43,600	40,300
Atlantic Finance.....		29,700	29,000
Standard Discount.....		2,800	2,800
Premier Finance.....		600	600
Commodore Group.....		17,125	6,250
Recovered to date—Commodore.....		3,561	3,561
		\$ 99,763	\$ 84,888
Net Assets.....		\$149,264	\$149,264
Less Recovery.....		99,763	84,888
LOSS.....		\$ 49,501	\$ 64,376

Estimated Loss is between 50 millions and 64 millions. No account has been taken of potential recoveries from litigation and other claims and no allowance has been made for the expense of receivership.

March 10, 1966

¹Exhibit 787.

Some explanatory observations are necessary. To arrive at the figure for gross assets at June 17, 1965 the receiver and manager added back the augmented allowance for bad debts of \$6,354,000 to the assets shown on the Deloitte, Plender & Co. statement of \$154,810,000, and then reinstated the allowance originally shown by the company on the quarterly statement of March 31, 1965 of \$2,976,000 to arrive at a total of \$158,188,000. From this were deducted unearned interest and dealers' reserves to reach a net asset valuation of \$149,264,000, as compared to \$145,885,569 in its statement of condition as at June 17, 1965. The expected recovery is divided between high and low estimates in amounts which have already been referred to, and two entries only, which do not vary, require further comment. The first is the figure of \$2,377,000 which is the total of assets other than accounts receivable, and the second is the amount of \$3,561,000 which, as already noted, had been recovered from the receivables of the Adelaide Street group. Some idea of the expenses of receivership, which have not been taken into account in the estimate of loss, may be obtained by referring to the receiver and manager's "Memorandum as to Initial Award of Compensation"² where the estimate as at November 17, 1966 for the total payable to it and to its agent, the Clarkson Company, out of Atlantic funds during the course of the receivership was \$2,925,000, plus the fees of counsel and solicitors which, on the basis of subsequent reports, may well be upwards of \$600,000.

Subsequent Reports of the Receiver and Manager

On August 3, 1966 the first formal statements were issued for "Atlantic Acceptance Corporation Limited — in Receivership" for the period ended December 31, 1965.¹ These statements were examined but the auditors, Price, Waterhouse & Co., were unable to express an opinion on them, "because of the uncertainties in determining the estimated realizable value of certain important assets". The statements seemed to confirm the worst estimate of Mr. Haxton's earlier testimony by showing a deficiency in net assets of \$52,204,233, or a total loss of \$68 millions after wiping out the shareholders' equity at March 31, 1965 of \$16,079,747. Thus the total deficit at this point appeared to be \$68,283,980, a figure which included "current loss" of \$279,465. It will be noted that "current losses" accumulate during the receivership largely as a result of the continuing accrual of interest on the outstanding debt which cannot be met by the interest taken in by the receiver and manager.

The receiver and manager's "Memorandum as to Initial Award of Compensation",² issued on November 17, 1966 and referred to earlier,

²Appendix F.

¹Exhibit 2920.

³Appendix F.

THE LOSS

included a section entitled "Financial Condition" which presented a pro forma balance sheet as at August 31, 1966. This statement continued to show an asset deficiency in excess of \$52 million and was prepared, as it is said, "for the purpose of establishing the tangible assets position of the receivership at that date and to reflect the potential recovery for creditors".

It reflects indeed the dramatic change in the direction of liquidity as a result of the stewardship of the Montreal Trust Company, showing cash and deposit receipts in the order of \$54,000,000; shares of Great Northern Capital Corporation Limited valued at \$700,000, which were received in exchange for all the shares of Commodore Sales Acceptance, a transaction which enabled the purchaser to secure the benefit of a substantial tax loss and a corporate shell, the name of which was changed to Home Smith Developments Limited; notes of General Acceptance Corporation valued at \$12,427,511, taken apparently in payment for nearly \$20,000,000 worth of outstanding sales finance receivables of Atlantic Acceptance as at June 30, 1966 at a discount of 27%, less unearned interest and dealer reserves; a residuum of miscellaneous accounts receivable of \$811,675; income tax recoverable in respect of the years prior to 1965, \$467,229, (in connection with which it should be said that the receiver and manager expects additional recoveries exceeding \$100,000); investment in subsidiary companies' shares at cost, less amounts written off of \$3,695,154,—about which there is a note to the effect that this reflects the value of receivables still held for collection in the subsidiary companies; and advances of \$17,667,766; all of which, together with small miscellaneous items, amount to total assets of \$89,545,100. The cash and deposit receipts item includes the sale of 85% of the receivables of Atlantic Finance Corporation, and the amount for "advances" must include those made to what is described as the "Lucayan Beach complex, Treasure Island group, and Conarm Developments Limited" which, the memorandum indicates, the receiver and manager has continued to operate and to which "it has been necessary to advance substantial additional funds". Presumably this very large figure also includes the valuation of the Lucayan Beach Hotel carried on the books of the receivership.

In summary the receiver and manager says that the total assets represent "a conservative estimate of recoveries for the senior notes (before deduction of receivership expenses)" and the senior debt is shown to have grown by the accrual of interest to \$118,903,291. This statement also shows a valuation for capital stock of \$14,455,087, rather than the figure of \$16,000,000 odd agreed to by Haxton as an ingredient of the loss. If the implied adjustment is made and to it is added the cost of receivership estimated in terms of compensation for Montreal Trust Company and the Clarkson Company plus solicitors' and counsel fees, an estimate of loss at that date of \$71,000,000 is only too easily reached.

During the period of the Commission's investigation, and prior to the publication of this report, financial statements of the receivership, also audited by Price, Waterhouse & Co., have appeared for the years ended December 31, 1966³ and December 31, 1967.⁴ Those for December 31, 1966 reflect an upward adjustment in the estimated realizable value of Atlantic's assets of a net amount of \$3,037,608. None the less, interim costs of the receivership amounting to \$2,154,812 and its operating loss for the year in the amount of \$2,805,159 more than offset this favourable development; so that the apparent loss increased to \$68,581,683. At the end of the following year, December 31, 1967, a similar picture was presented; the prospects of realization of the remaining assets had improved to the extent of \$1,773,647 but the operating loss for the year amounted to \$2,758,221, and the deficit in consequence stood at \$69,566,257. These operating losses did not, according to the auditors' report, include Atlantic's share of the accumulated losses of Lucayan Beach Hotel and Development Limited, stated to be at September 30, 1967 approximately \$2,100,000. Moreover the receiver and manager, in its interim report of November 13, 1968, expressed its intention to apply to the Supreme Court of Ontario for a further interim advance of compensation in 1969 and since the financial statements of the receivership for the fiscal years 1966 and 1967 did not appear until August of the years following, the situation at December 31, 1968 is not likely to be disclosed before August 1969, or after the completion of this report.

The Imponderables

In the meantime two factors militate against an early winding-up of the receivership and the determination of the final loss to the holders of Atlantic obligations and securities. On April 18, 1966 Connecticut General Life Insurance Company, holder of senior long-term notes of Atlantic Acceptance Corporation in the principal amount of \$2,000,000 and \$1,000,000 of junior subordinated debt, commenced an action against Montreal Trust Company, as trustee under the trust indenture dated February 1, 1961, to invalidate all the senior notes issued after June 30, 1964 on the grounds of breach of a covenant of Atlantic and the trustee that the company would not issue any notes or preferred shares if the aggregate principal amount of consolidated debt exceeded 350% of the sum of the company's consolidated net worth, less the book value of its fixed assets, plus the aggregate principal amount of subordinated debt. Should the action succeed some 70% of the senior notes outstanding at June 17, 1965 would be disentitled to the security of the trust indenture, and holders of senior, subordinated and junior subordinated notes issued prior to the alleged date of default would be entitled to priority in the distribution of the assets. Since the accounts of

³Exhibit 4914.

⁴Exhibit 5123.

the receivership contemplate the whole amount realized on the consolidated assets of Atlantic being available for application against the senior debt, which at December 31, 1967 amounted with accrued interest to \$127,768,562, compared with subordinated debt of \$19,353,857 and junior subordinated debt of \$5,024,799,¹ it is clear that a final distribution must be postponed until the settlement of this action or its disposal at trial. By the end of 1968 no date for trial had been set and the determination of this issue is not probable by the time this report is presented. In the second place the sale of the Lucayan Beach Hotel, in which the receiver and manager had invested by December 31, 1967 \$10,576,592 of Atlantic assets, has not been completed and, although the interim report of November 13, 1968 expresses guarded optimism as to the possibilities of sale and announces the termination of the lease-management agreement under which the hotel had been operated for the past three years and the conclusion of a new and more advantageous arrangement, a number of considerations affecting the future of this enterprise must be taken into account. The change of government in the Bahama Islands in January 1967 at first appeared to threaten the licensed gambling activities in that area of Grand Bahama Island, alienated for ninety-nine years to foreign promoters by the Hawksbill Creek Act and without which the attractiveness of the featureless island as a tourist resort could be greatly reduced. One result was a sharp and almost punitive increase in taxes on gambling casinos, causing the abandonment of at least one on Grand Bahama and the temporary closing of the casino operated in the precincts of the hotel itself from which it derives a rental of \$600,000 per annum. Another result was the appointment of a Commission of Inquiry on March 4, 1967 to investigate gambling activities in the Colony which, by the end of that year, had presented a report casting a strong and unfavourable light on a situation already illuminated by the most lurid publicity in the American press; this report will be referred to in some detail in Chapter IX, dealing with the venture of Atlantic Acceptance in the development of Lucayan Beach. There are, however, signs that the new Bahamian government is unwilling to create a serious disturbance of licensed gambling on which it is believed that the burgeoning tourist business of the colony largely depends, and the influences which operated so successfully upon the previous administration are still in a position to bring heavy pressure upon its successors.

A Conservative Estimate

A reasonable estimate of the eventual loss to the noteholders and shareholders of Atlantic Acceptance Corporation can therefore only be taken in the face of these imponderables and the possibility of unexpected windfalls and setbacks. An example of the former was the

¹Exhibit 5123.

rapid and unexpected appreciation in the value of the shares of Great Northern Capital Corporation received in exchange for those of Commodore Sales Acceptance and carried on the books of the receivership at \$700,000 for the past three years; these have been recently sold for slightly over \$2,000,000. No attempt has been made to estimate the loss to the other creditors of companies made bankrupt as a result of efforts to collect Atlantic's debts, and the loss suffered by British Mortgage & Trust Company, as a result of its investment in what has been described as the "Atlantic complex", is separately treated in Chapter XV, which describes how that company escaped insolvency by a hair's breadth but lost its identity and the reputation of eighty years in the process. On the whole the history of the receivership has shown recovery generally coinciding with Mr. Haxton's highest estimate of the loss which must be expected by the noteholders and shareholders of Atlantic Acceptance and may be reasonably fixed at \$65,000,000 at the time of writing, without making any allowance for the costs of the receivership or for the losses suffered by other persons and enterprises in the wake of and as a result of the largest and most damaging commercial failure in Canadian history.

CHAPTER V

Three Acquisitions

- 1. COMMODORE SALES ACCEPTANCE LIMITED**
- 2. AURORA LEASING CORPORATION LIMITED**
- 3. ADELAIDE ACCEPTANCE LIMITED**

1

Jack Tramiel and Manfred Kapp

The sixth annual report of Atlantic Acceptance Corporation for the year ended December 31, 1958 was dated March 26, 1959 and contained, as will be recalled, an expression of its president's intention to acquire an interest in a factoring company. Some three weeks previously he had already created the vehicle which Atlantic was to acquire and had called it Commodore Sales Acceptance Limited, thus suggesting the name of the first company to be financed with Atlantic money against the pledge of its accounts receivable and bringing on to the stage two people who were destined to play a large part in Atlantic's affairs. Commodore Portable Typewriter Limited (later to become Commodore Business Machines (Canada) Limited) was incorporated in October 1958 as a result of the efforts and to fulfill the requirements of Jack Tramiel and Manfred Kapp whose background and experience require brief notice. According to the account given by Tramiel in his sworn evidence to the Commission on November 30, 1966 he was born on December 13, 1927 in the city of Lodz in Poland and spent the years from 1940 to 1945 in a German concentration camp where he learned to speak German. Other official sources, relying on information supplied by himself, indicate that his name was originally Kaufmann Idek Tramiel or Tramielski and that he was born on September 13, 1927 or December

13, 1928. He has said that he was in concentration camps from 1939 to 1945, and, on his application for a United States visa, that he lived in the ghetto at Lodz until June 1944 thereafter being confined in Auschwitz and Bergen-Belsen. He appears to have entered the United States in 1947 and to have been in the United States Army from 1948 to 1950 when he was a cook and for less than a year in 1951-2 when he was a typewriter repair man. Between his tours of duty in the army and for a time after his second tour he worked for a company called Ace Typewriter Repair Company and between 1952 and 1954 drove a taxicab in the city of New York, a fact not divulged to the Commission when he was asked about his employment record. Some uncertainty must inevitably obscure the origins and cloud the recollection of a man who was only a boy when engulfed in the German attack on Poland in 1939, and it is perhaps unnecessary to multiply the inconsistencies and doubts which the Commission's inquiries have produced, since he is now an American citizen. Manfred Kapp told the Commission¹ that he was born in Luneburg in Germany on December 17, 1928 and was taken to France in 1933. He also entered the United States in 1947 and worked at the Ace Typewriter Company until 1950 when he spent two years in the United States Army. Kapp says that he first met Tramiel when he was on leave from the army in New York in 1951. Tramiel says that he first met Kapp in 1952 or 1953 when they were fellow-employees at the Ace Typewriter Repair Company. Kapp, who was in the ordnance department, acquired a knowledge of book-keeping in the army whereas Tramiel either gained or improved his knowledge of typewriters in that service.

Whatever may be the truth of this chronology—and it is dwelt upon because the credibility of these two men must, in view of the evidence they gave and the parts they played, be tested at every point—it seems to be common ground that Tramiel and Kapp formed a partnership for the sale of used and reconditioned typewriters in New York in or before 1954, the first consignment of which according to Tramiel was obtained from the United Nations Organization. With money acquired from the sale of these machines they bought a business in the Bronx called the Singer Typewriter Company from the premises of which they sold new and used typewriters and in due course acquired a local dealership for an adding machine called "Everest". Tramiel, who was the "outside man" of the partnership, while on selling trips outside New York visited Toronto where the wife he had married in Germany had relatives. Here he found interest among dealers in the Everest machine and returning to New York persuaded the manufacturer to give himself and Kapp an exclusive Canadian dealership. By 1956 Tramiel had moved his family to the Don Mills district of Toronto and had established ~~Everest Office Machines Limited~~^{*} at 2 Toronto Street on money

¹Evidence Volume 87.

THREE ACQUISITIONS

borrowed from his stepfather and mother in New York. To the stock-in-trade of new adding machines were added used typewriters shipped by one of the Singer Company's suppliers known as Type Sales Inc., and after about a year of operation in Toronto, where Tramiel was assisted by Kapp on week-end visits, the latter brought his family there in his turn and threw in his lot completely with his partner's Canadian enterprise.

In the next two years Everest Office Machines handled the sales of the adding machine and a line of new typewriters, and the used typewriters were marketed by another firm known as Wholesale Typewriter Company. Both of these enterprises were jointly owned by Jack Tramiel and his wife, Helen, and Manfred Kapp and his wife, Estelle. Quite soon the money invested by Tramiel's stepfather and mother, Mr. and Mrs. Silberman, had to be reinforced by allowing Type Sales Inc. to acquire an interest in the Toronto businesses which by 1958 were showing signs of faltering. In the meantime Tramiel had been in England and had there met one Markus, who was the agent for the Everest machine in Great Britain. Since the Canadian market for used typewriters of a kind not particularly well adapted to local needs was fading, and the demand for new portable typewriters was not being readily met, Tramiel was interested in Markus's suggestion that a manufacturer in Czechoslovakia was engaged in exporting portable typewriters to this country and had so far failed to find a reliable distributor. From this conversation and with Markus's help the Czech machines began to come in to the premises at 2 Toronto Street where a new company, incorporated on October 10, 1958 under the name of Commodore Portable Typewriter Company Limited, had been brought into existence. The holders of all its shares at this stage were Mr. and Mrs. Tramiel, Mr. and Mrs. Kapp and Mr. and Mrs. Silberman.

The business of Commodore Portable Typewriter might well be judged to have reached satisfactory proportions when substantial orders for the Czech typewriter were placed by Toronto's two largest department stores, the T. Eaton Co. Limited and the Robert Simpson Co. Limited, known more familiarly to generations of Torontonians as Eaton's and Simpson's. But shortage of working capital was a familiar problem. The company had been financing its inventory by factoring its accounts receivable with a lender by the name of Inter-Provincial Commercial Discount Corporation Limited which was providing funds at a cost of 2% per month against accounts payable in 90 days. To obtain better terms and to enlarge the inventory the manufacturer must be looked to, and he in turn looked to the Czechoslovakian State Bank which required an acceptable guarantor of payment. Tramiel's story² is that the guarantee of Inter-Provincial Discount was offered and declined, and that at the suggestion of one Hall, editor of a magazine

²Evidence Volume 84.

known as "Canadian Office" in which Commodore Portable Typewriter was advertising, he applied to Douglas R. Annett of Annett & Co. for some assistance and a solution of the financing problem. At Annett's office he also met Carman G. King, probably in February of 1959. Tramiel, who conducted these negotiations by himself or with the assistance of his solicitor, L. W. Spencer, was told that there was no possibility of financing by an investment house or other institution, but that if the arrangement with Inter-Provincial Discount was unsatisfactory, Annett & Co. were prepared to introduce him to another finance company. Shortly afterwards, and again at the Annett office, Tramiel met C. P. Morgan.

Annett & Co. Introduce C. P. Morgan

It will be remembered at this point that Morgan was fresh upon the Toronto scene and eager to expand the enterprise which had recently received impressive support from Lambert & Co. No one had been more concerned with obtaining this than Carman King and he, in his evidence given to the Commission on December 21, 1966¹, has testified to his interest in the attractive terms upon which Inter-Provincial Discount was lending to Commodore Portable Typewriter. Morgan expressed his own interest in the factoring business as a new field for Atlantic Acceptance and agreed to form a company for the purpose of financing Commodore Portable Typewriter in this way; Atlantic would provide the necessary guarantee required by the Czechoslovakian State Bank. This decision was reached, according to Tramiel, after two days of discussion and after Morgan had appeared at the Commodore premises with A. C. Rooney for a tour of inspection and to look at the books. After this the plan was elaborated to the extent of providing an interest of 25% for Commodore Portable Typewriter and 24% for Annett Partners Limited, a participation suggested by Morgan according to Tramiel and by Tramiel according to King. A meeting at the King and Bay Streets branch of the Bank of Nova Scotia, attended by the manager of the branch, Morgan, D. R. Annett, King, Tramiel, Kapp, L. W. Spencer and Harry Wagman, then took place. To this Wagman was bidden by a telephone call from Morgan and, if one is to believe Wagman's evidence,² merely to be told that the firm of Walton, Wagman & Co. were to be auditors of a new company called Commodore Sales Acceptance Limited; other than to hear this intelligence he says he played no part at the meeting. Both Walton and Wagman asserted that they had only met Morgan at one previous occasion in Walton's office when, as will be recalled, Morgan was representing the International Silver Company in the bankruptcy of Associated Housewares Distributors, and Walton said that he only knew of this appointment of their firm after

¹Evidence Volume 93.

²Evidence Volume 82.

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the event from Wagman. They were later to admit that there were probably other meetings prior to this. Tramiel says that he did not know of this appointment of auditors until a month later; he also volunteered the information that with an investment of \$100,000 by its promoters the new company was to get a line of credit of \$300,000 from the bank, and it is not unreasonable to suppose that this was the principal subject of conversation at the Bank of Nova Scotia meeting. No doubt Morgan did most of the talking, but difficulty in recalling what was said or done on that occasion is characteristic of all of the evidence of the principal actors in this transaction. In any event there was another meeting in Morgan's office a day or two later attended by Morgan, Tramiel, Kapp and Wagman. Wagman said that the main discussion here was about the factoring of the accounts receivable of Commodore Portable Typewriter which was to be the first customer of Commodore Sales Acceptance. He was to set up the books and thereafter work closely with Manfred Kapp, but no reference was made to any reason why this factoring could not be done directly by Atlantic Acceptance and why it was necessary to set up a subsidiary company.

Incorporation and First Financing of Commodore Sales Acceptance

Although Commodore Sales Acceptance was incorporated as a private company on March 4, 1959 with six shares being issued at a price of \$1 each to Morgan, D. R. Annett, Carman King, L. W. Spencer, and two employees of the latter's law firm, Atlantic's acquisition of the promised 51% interest did not take place until May 20, at which time 3,996 shares were allotted for a total consideration of \$400, 2,038 shares being allotted to Atlantic Acceptance Corporation and 1,958 shares to Annett & Co. The apparent shortage of four shares is due to the allotment of two at 10¢ to be held in trust for Atlantic by Morgan and Spencer and two to D. R. Annett and Carman King to be held in trust for Annett & Co., subsequently rescinded and cancelled by the directors on August 24, 1960. This discrepancy, as well as an apparent surplus of two incorporator's shares issued but not transferred, led to a minor variance between the records of the company and its financial statements as to the total number of shares issued, authorization by the directors varying between 100,006 and 100,002 and the financial statements showing a total of 100,000 shares; to note the irregularity as a minor discrepancy only is probably sufficient. These shares were issued in conjunction with an issue of promissory notes payable on demand in the aggregate amount of \$100,000 for which Atlantic Acceptance lent \$51,000 and Annett & Co. \$49,000, so that the "package" amounted to an issue of 40 common shares at 10¢ per share for each \$1,000 worth of notes purchased. On July 22, 4,000 shares were issued at a price of 50¢ per share in conjunction with the sale of a further \$100,000 worth of demand notes, 2,000 shares being subscribed for by Atlantic Accep-

tance with \$50,000 worth of notes, 1,000 shares by Annett & Co. with \$25,000 worth of notes, 500 shares by Renel Investments Limited, a company controlled by L. W. Spencer, with \$12,500 worth of notes and the same subscription and purchase by Sidney Fromer putting \$102,000 into the company's treasury. The third issue of demand notes and shares took place on October 13, and on this occasion 8,000 shares were issued at \$1 in conjunction with the sale of \$200,000 worth of notes, Atlantic Acceptance maintaining its position by taking 4,000 shares with \$100,000 worth of notes but Annett & Co. only 1,000 shares with notes in the amount of \$25,000. The balance went to W. H. Wallace, John C. Laidlaw, R. J. McCullagh and Mrs. G. C. McCullagh in amounts as to shares and notes which are set out in the analysis of issues and transfers of shares and notes shown at Table 24¹ and Table 25.² The result was to put a further \$208,000 into the treasury of Commodore Sales Acceptance.

Evidence of John C. Laidlaw

At the risk of digressing and because Mr. Laidlaw will be met with again, it should be said that at this time he was the Toronto circulation manager of Toronto's morning newspaper, *The Globe and Mail*. He gave evidence on two occasions before the Commission to identify various documents but it was in an examination under the Securities Act, conducted by Mr. Cartwright on January 26, 1967,¹ that he testified to his association with C. P. Morgan whom he had first met when they were next door neighbours in Burlington, Ontario. Laidlaw said that their first association was in 1956, but it is reasonable to assume that it was earlier because he refers to Morgan's departure for Niagara Falls "two or three years" afterwards. The two families became very friendly and later on, while the Laidlaws were still in Burlington, Morgan told him about Commodore Sales Acceptance and asked him whether he was interested in buying shares or notes. At first he declined but the suggestion was renewed and may best be described in his own words:

"He also asked me whether I knew of any one else who might be interested, with the understanding these would be transferred or exchanged into Atlantic shares at a later date. At that time, I forget the exact amount I put in, I think I purchased the equivalent, when it was transferred into Atlantic shares, about fourteen hundred shares on my part."

Laidlaw's sister, Mrs. McCullagh and her son, R. J. McCullagh, who had considerably more funds at their disposal, were also persuaded to invest, and as a result of the substantial profit that they made Laidlaw

¹Exhibit 3241.

²Exhibit 3242.

³Exhibit 4888.

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and the McCullaghs made a later investment in a Morgan enterprise which was a total loss. In 1962 Laidlaw was induced to leave his position with the newspaper and go to work for Morgan at Chartered Management Consultants to act as a confidential investigator of borrowers from Atlantic at a salary of \$20,000 a year. Here he had a small room, a "hole in the wall" as he said, in the offices of Walton, Wagman & Co. in the Temple Building and began his career as a nominee director and confidant of the president of Atlantic Acceptance. If his recollection of a conversation with Morgan about the forthcoming conversion of Commodore Sales shares and obligations into Atlantic stock is accurate, his evidence in this respect illuminates an intricate transaction from which disturbing inferences must be drawn. At this time Laidlaw had absolute faith in Morgan's integrity and judgment, both from conviction and as a result of inquiries he was careful to make, and remained in his employ until June of 1965.

Commodore Portable Typewriter's Interest in Commodore Sales Acceptance

The issue of demand notes of October 13, 1959 was the last of that order and a further digression may here be made to discover means by which Commodore Portable Typewriter was allowed its promised 25% interest in Commodore Sales Acceptance. Jack Tramiel maintained under oath that his company had no money to invest in this way and that he and Kapp had not sought any participation in the new venture, but that everything was arranged by Annett & Co. and Morgan. In fact Commodore Sales Acceptance lent Commodore Portable Typewriter \$65,000 at the very start of their association against the accounts receivable of the latter company of which \$25,000 was used to pay off Inter-Provincial Discount Corporation. The sum of \$8,000 was paid to Annett & Co. in respect of a loan, \$25,000 was lent back to Commodore Sales Acceptance and the balance was retained by Commodore Portable Typewriter, which also obtained a note from Commodore Sales Acceptance to secure the loan thus made with the borrower's own money. The money paid to Inter-Provincial Discount was on account of a liability of Everest Office Machines to that company and, in consideration for Commodore Portable Typewriter's contributing in this painless fashion a quarter of the funds which bought the first issue of Commodore Sales Acceptance notes, two of its shareholders, Helen Tramiel and Estelle Kapp, were permitted through Annett & Co. to acquire 500 shares each, or a quarter of the company's issued stock. Tramiel's evidence about this transaction, which began three days of equivocation on a variety of topics, progressed from the denial of any knowledge of the transaction to a denial of any understanding of its purpose and may well be reproduced.¹ It is important to remember that the ground to be covered had

¹Evidence Volume 84, pp. 11327-32.

already been explored in a preliminary discussion between Mr. Shepherd and the witness in the presence of the witness's counsel.

"MR. SHEPHERD: Do you consider it probable, Mr. Tramiel, that you would forget whether—a company is established, Commodore Sales Acceptance, requiring \$100,000 to operate, and it lends twenty-five thousand of those dollars to its principal borrower so that that borrower may re-invest the money in Commodore Sales Acceptance? Would you forget that? Would you forget whether or not that occurred?

A. The way you have said, Mr. Shepherd, it did not occur this way. I don't remember of any exact money loaned to Commodore Portable Typewriters for this purpose, investing in Commodore Sales Acceptance. That did not occur the way you have just mentioned it to me for this specific purpose.

Q. Well then, what did occur, Mr. Tramiel? Do you remember?

A. Mr. Shepherd, I am trying to answer you, the question to the best of my knowledge—

Q. Yes—?

A. —it may be Mr. Kapp could give you an answer on this because he was involved in the financial transactions after the company was set up, maybe he has better knowledge of it than I do because he was involved in it as far as how it was set up exactly.

Q. Was it at the meeting with Mr. Annett and Mr. Morgan—and do you say Mr. King too? —at which the discussion was held of the 51%, 24%, 25% ratio?

A. In Mr. —?

Q. Annett's office?

A. Yes.

Q. And who asked you whether or not Commodore Portable Typewriters wished to take a 25% interest?

A. That particular part I don't think I was asked, I was told 'This is the way it is going to be set up'.

Q. Then did you make inquiry, or were you told, where the money was going to come from for you to invest?

A. If I was asked, Mr. Shepherd?

Q. Or were you told?

A. No, I was not asked and I was not told.

Q. What did you say when you were told that Commodore Portable Typewriters would advance 25% of the money, being \$25,000?

A. I have agreed to it, that Commodore Portable Typewriter will invest this \$25,000.

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Q. Now, when you agreed to it to what source were you looking for the money to invest?

A. Mr. Shepherd, we were borrowing moneys from previously, from Interprovincial.

Q. Yes?

A. We had a certain amount of money in our bank account.

Q. Yes?

A. If the money was invested in Commodore Sales Acceptance, after we have borrowed money from Commodore Sales Acceptance, definitely the money came from Commodore Sales Acceptance. If it was before, then it must have come from our bank account, but the money was borrowed from Interprovincial.

Q. And is the position: Commodore Sales Acceptance, you say, may have loaned the \$25,000, or part thereof, to Commodore Portable Typewriters to enable it to make this investment; but if that happened you have forgotten about it?

A. No, I am not saying that if it made — I can't remember the whole transaction, where the money came from — I don't —

Q. Did you not just say to me one moment ago it may have come from Commodore Sales Acceptance, wholly or in part?

A. Mr. Shepherd, the way you have explained it to me, yes, it may have come from Commodore Sales Acceptance.

Q. And if it did come from Commodore Sales Acceptance, wholly or in part, you have forgotten about it? You are not able to tell us about it?

A. I am answering the question the way you have asked.

Q. Well, answer that one then, please?

A. If it came from Commodore?

Q. Yes?

A. If I would know it did, I wouldn't have forgotten, but I don't know if it did. That is the reason why I don't remember.

Q. I see. It may have come from Commodore Sales Acceptance without your knowledge. Is that the position?

A. Mr. Shepherd, not without my knowledge. I have answered you before that I am not usually involved in the investing of the money, exactly where it came from. There will be no problem at all, I believe, for Mr. Kapp to answer you this question. If I could answer the question, maybe even now I could help you, but there is no reason for me to withhold information to you.

Q. Well, Mr. Tramiel, are you satisfied that at the time Commodore Portable Typewriters invested \$25,000 in the notes of Commodore Sales Acceptance, you then knew what the source of the \$25,000 was, whether

it was from Interprovincial Discount or from the bank account of Portable Typewriters—?

A. From the bank account, I am sure it is from the bank account.

Q. Oh, I am equally sure it is from the bank account. You wrote a cheque, no doubt?

A. The office did, yes.

Q. Do you recall Commodore Portable Typewriters writing a cheque to Commodore Sales Acceptance for \$25,000?

A. I know that they received a cheque, Mr. Shepherd—

Q. You know who received a cheque?

A. Who received the cheque?

Q. Yes?

A. No, I don't know who received the cheque.

Q. No. You said, Mr. Tramiel, 'I know they received a cheque'?

A. No, that Commodore issued a cheque—

Q. Commodore Portable Typewriters?

A. Pardon me, yes. Commodore Portable Typewriters issued a cheque for \$25,000. I have given the instructions to issue that cheque to the office.

Q. It would be either to Annett or to Commodore Sales Acceptance, I take it?

A. You see, you just remind me of something. I believe it was to Annett and Company.

Q. Yes?

A. But it is quite a number of years, Mr. Shepherd, and I don't remember exactly.

Q. And you cannot assist us further, other than you have already, as to where Commodore Portable Typewriters got that money to make the cheque good?

A. Only in the way I have said it."

After further questioning and a recess in which the witness conferred with his partner Kapp, the examination was resumed:²

"Q. What the company actually did, Commodore Sales Acceptance, that company loaned \$25,000 to Commodore Portable Typewriters and Commodore Portable Typewriters loaned the \$25,000 back to Commodore Sales Acceptance, which made up part of the \$100,000 raised by Commodore Sales Acceptance? Is that correct?

A. Yes.

²Evidence Volume 84, pp. 11347-50.

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Q. Now, I ask you again why did Mr. Morgan, under those circumstances where he was finding all the money, allow you and Mr. Kapp or your families, to acquire a 25% interest in Commodore Sales Acceptance for \$100?

A. Mr. Shepherd, it could have been, I say again, after knowing what the future of Commodore Portable Typewriters would be, that I could have asked Mr. Annett if I could make this investment.

Q. Yes?

A. But the exact details, even I don't—I don't recall, it could have been because after discussion just now, it could have been that way, that could be we asked, maybe I asked—

Q. And do you consider that you did ask Mr. Annett?

A. Yes.

Q. Then why would Mr. Annett agree to it then? You see, here is the position, Mr. Tramiel: Atlantic Acceptance advances \$51,000, actual dollars for notes and it is allowed to subscribe at 10 cents per share in 51% of the stock. Is that correct?

A. Yes.

Q. Annett, or for the moment let us say Annett, subscribed or loaned to Commodore Sales Acceptance, \$24,000 and are allowed to purchase at 10 cents a share, 24% of the stock. Is that correct?

A. Yes.

Q. Now, Commodore Portable Typewriters lends \$25,000 to Commodore Sales Acceptance but obtains the money to do so by borrowing it from Commodore Sales Acceptance, and in return for that, you and Mr. Kapp, or your families, are allowed to subscribe at 10 cents a share for 25% of Commodore Sales Acceptance? Is that correct?

A. Yes.

Q. Do you agree that this was an extremely generous gesture on behalf of Commodore Sales Acceptance towards you and Mr. Kapp?

A. Yes.

Q. Did Mr. Morgan or Mr. Annett assert why this benefit was being conferred upon you?

A. Mr. Shepherd, to answer your questions, he, to me, the most important thing at that time was to be able to get the financing for Commodore Portable Typewriters.

Q. I appreciate that, Mr. Tramiel, but my question was directed to the fact that you got more than financing for Commodore Portable Typewriters, you got a 25% interest in Commodore Sales Acceptance on terms more favourable than those afforded to the Annett Company or

Atlantic Acceptance; and my question was directed to why that occurred?

A. We could—well, I said before, we could have asked if we could participate. We dealt with Mr. Annett because I believed the loan was made through Mr. Annett, but our investment was made through Annett and Company, not directly to Commodore Sales Acceptance—

Q. Yes—?

A. —and why exactly we received it, I don't know.

Q. Well, is not your answer then you don't know why you received this opportunity?

A. Right."

Tramiel also asserted that it was at this time that the common stock of Commodore Portable Typewriter was turned over to Morgan to be held by him in trust for Commodore Sales Acceptance as further security for the repayment of this company's loans, and not in October 1960 in trust for the owners of the shares as is recorded in the minutes of the former company.

Further Financing of Commodore Sales Acceptance

Returning now to the financing of Commodore Sales Acceptance, a memorandum¹ to his partners and associates in Annett & Co. from Carman King dated December 21, 1959 outlines the next development.

"Memorandum to:—

Messrs. D. R. Annett,
J. W. Annett,
T. A. W. Duncan,
E. J. Allman.

From:—C. G. King.

Re: Commodore Sales Acceptance Limited

Powell Morgan has called a directors meeting for 11.00 a.m. Wednesday, December 23rd to be held in his office to approve additional financing, the payment of the accrued interest on the outstanding 6% notes as of December 31st, the splitting of the common shares (in effect 4 for 1) and the declaration of a common share dividend as of December 30th, of 10¢ per share on the new common.

The estimated profits for the year ending December 31st should amount to around \$25,000 after taxes and interest, or about 25¢ per share on the new common.

There are now outstanding 400,000 6% notes and 16,000 shares of common. 4000 of the presently outstanding (old) shares are to be sold

¹Exhibit 3246.

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to Atlantic Acceptance at \$1.00 per share to compensate them for management and the placing of future situations with Commodore. This will result in there being outstanding 20,000 shares prior to the split.

Their line of credit with the Bank of Nova Scotia still stands at \$150,000.

The initial offering of 100,000 notes of the above at par carried 4000 shares of common at 10 cents, the second offering of 100,000 of the above notes at par carried 4000 shares of common at 50 cents. The third offering of 200,000 notes at par carried 8000 shares of common at \$1.00 per share.

It is also proposed to change the outstanding notes which presently have no term into 5 year 6% notes due December 31st, 1964, to be redeemable at par at any time prior to maturity at the call of the company.

The proposed additional financing is to consist of 100,000 6% notes due December 31, 1964 at par and 10,000 shares of the new common at \$1.00 per share.

Providing payment is made for these new securities by December 28, 1959 the new common shares will participate in the 10¢ dividend which will go ex dividend December 29, 1959.

c.c. Mr. C. Powell Morgan

C. G. King"

The meeting was attended by the four directors of the company, C. P. Morgan, D. R. Annett, L. W. Spencer, and C. G. King, and resolved first that "subject to agreement by all parties concerned" all the demand notes issued to date be altered as to their terms by making them payable on December 31, 1964 but redeemable at par at any time at the option of the directors, a provision which would have been of singular disadvantage to the noteholders in any circumstances other than those which ultimately developed. Secondly, the issue of 6,500 shares forthwith as fully paid and non-assessable was authorized for services rendered as follows:

125 shares to Carman G. King for arranging, financing and administrative services.

125 shares to Douglas R. Annett for the same services.

125 shares to Louis W. Spencer for legal services.

250 shares to Manfred Kapp for public relations services.

1,000 shares to Harry Wagman for general office and accounting services.

4,875 shares to Atlantic Acceptance Corporation Limited for management and credit services.

Nevertheless these shares are shown in the books of the company as having been paid for at \$1 per share. Thirdly, all the shareholders of the company were given the right to subscribe for three shares for each one

then held at a price of 10¢ per share. Fourthly, the offer of Annett & Co. or its nominees to lend the company \$100,000, repayable at par on December 31, 1964, bearing interest at 6% per annum, and its subscription for 10,000 shares at \$1 per share were accepted. Fifthly, a dividend of 10¢ per share to shareholders of record on December 28 was approved and, sixthly, the borrowing of \$200,000 with interest at 9% per annum from Atlantic Acceptance was authorized. Finally the number of the company's directors was increased from four to seven.²

Some simplification of what appears in Table 24 should here be attempted. Dealing with the issues of December 23, 1959, the first and simplest is that of the 6,500 shares issued for services rendered but for which \$6,500 was apparently received by Commodore Sales Acceptance. Then on the same date the recipients of these shares were issued three shares for each one issued for services rendered at a price of 10¢ per share, yielding \$1,950. The remaining shareholders did not get the benefit of this option until the date of its expiry on December 26, at which time they were issued 48,000 shares at an aggregate price of \$4,800. One other transaction on December 23 must be noticed and that is the subscription made by King on behalf of Annett & Co. for 10,000 shares in respect of the \$100,000 in term notes issued against the loan above referred to. This issue was distributed as follows:

	<u>Notes</u>	<u>Shares</u>	<u>Total</u>
British Mortgage & Trust Company	\$ 25,000.00	2,500 @ \$1	\$ 2,500.00
McConnell, Eastman & Co. Ltd.	25,000.00		
Prismac Limited		2,500 @ \$1	2,500.00
Annett Partners Limited	40,000.00	4,000 @ \$1	4,000.00
C. G. King	10,000.00	1,000 @ \$1	1,000.00
TOTAL	<u>\$100,000.00</u>	<u>10,000</u>	<u>\$10,000.00</u>

McConnell, Eastman & Company Limited and Prismac Limited were closely associated in the person of James E. McConnell, as the split allotment shows. A further service was performed by Annett & Co. at C. P. Morgan's request and casts additional light on the beneficial owners of shares ostensibly held by Annett & Co. In a letter dated December 28, 1959, signed by Morgan on behalf of Commodore Sales Acceptance Limited, Annett & Co. were asked to disburse dividends at the rate of 10¢ per share to the following shareholders in respect of the

²Exhibit 60.

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numbers of shares set forth after their names and a cheque for \$10,000 was enclosed for the purpose:³

Annett & Co. et al	13,920
British Mortgage & Trust	1,920
Atlantic Acceptance Corporation	51,660
Phyllis McCullagh	3,360
Robert J. McCullagh	3,104
J. C. Laidlaw	1,536
Sidney Fromer	2,000
Renel Investments Limited	2,000
William H. Wallace	2,000
Van-Bur Ltd.	2,000
L. W. Spencer	500
C. G. King	500
D. R. Annett	500
H. Wagman	2,000
Estelle Kapp	500
Helen Tramiel	500
British Mortgage & Trust	2,500
Carman G. King	1,000
Prismac Limited	2,500
Annett Partners Limited	2,000
Annett Partners Limited	2,000
H. Wagman	2,000
	<hr/>
	100,000

Annexed to the letter as found in the Annett files is a memorandum showing the distribution of the 13,920 shares referred to opposite "Annett & Co. et al". It is in longhand and it is as follows:

A. T. Christie—Annett Partners	3,072
T. A. W. Duncan	384
C. G. King	2,304
W. F. Hill	160
Annett & Co. Ltd. re Tramiel	4,000
Mrs. K. Christie—Annett Partners	2,400
Wilfred P. Gregory	1,600
	<hr/>
	13,920

There are some observations to be made about names appearing in these lists. In the first place Helen Tramiel and Estelle Kapp appear as owners of 500 shares each which, as the certificates indicate, must have been Kapp's 1,000 shares acquired as to 250 for services rendered plus 750 at 10¢ per share. The 4,000 shares recorded on the Annett memorandum as being held by "Annett & Co. Ltd. re Tramiel" were partially dealt with on January 29, 1960 by a transfer of 3,000 to Mrs. Tramiel and Mrs. Kapp in denominations of 1,500 each, the balance being retained until February 1961 by Annett & Co. Neither A. T. Christie nor

³Exhibit 3247.

W. P. Gregory had yet become directors of Commodore Sales Acceptance and were not to do so until August 24, 1960. Gregory none the less became a director of Atlantic Acceptance on April 10, 1959. Christie would become one on March 17, 1960. At the end of the year 1959 Commodore Sales Acceptance had, according to its financial statement, and ignoring the discrepancies which plagued successive meetings of the board of directors, 100,000 common shares outstanding for \$33,650 and 6% unsecured notes due December 31, 1964, payable in the amount of \$500,000. It had accounts receivable from ten borrowers in the amount of \$742,400 of which \$320,500 was owing by Commodore Portable Typewriter (shown on the history of accounts receivable at Table 11 under its subsequent name of Commodore Business Machines) and net income earned of roughly \$22,400. Of the shares Atlantic held 51,562, Morgan and Spencer holding an additional four each in trust, and of the notes it had purchased \$201,000 worth at par.

Thereafter no more shares are issued although numerous transfers of ownership or registration take place, but on August 24, 1960 a significant change occurs in the nature and number of the obligations of Commodore Sales Acceptance. In establishing the time at which these changes were contemplated a second memorandum in draft form by Carman King, dated June 21, 1960, is of more than historical interest:⁴

"Memorandum:

June 21, 1960.

From:—Mr. C. G. King

COMMODORE SALES ACCEPTANCE LIMITED

As at December 31, 1959 this 51% owned subsidiary of Atlantic Acceptance Corporation Limited had outstanding 500,000 6% unsecured notes due December 31, 1964 and 100,000 shares of no par value common.

After all charges and income taxes they showed a profit of \$22,393.40 for the first 10 months of the company's operations, for the period March 4, 1959 to December 31, 1959. This amounted to 22.39¢ per share.

On December 31st the company paid the interest on the notes and a dividend of 10¢ per share on the common. Currently the common is \$3.00 bid over-the-counter and the earnings after taxes and interest for the first 5 months of 1960 are 17¢ per share.

It is now proposed to offer the unsecured note holders new 15-year 6% convertible notes dated July 1, 1960 due July 1, 1975. These notes will be convertible at the rate of \$5.00 per share for 14 years, commencing July 1, 1961. The notes will be non callable until July 1, 1961 and then will be callable on 60 days' notice commencing at \$108 and accrued interest and with the call price reducing half of one percent per annum. Conversion will be allowed until the day of redemption.

⁴Exhibit 3248.

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The above suggested offer is subject to the approval of the Board of Directors of Atlantic Acceptance Corporation Limited and of Commodore Sales Acceptance Limited.

If this proposed offer is approved it has been suggested that the Canada Trust Company, Toronto, become the Trustee for the new convertible notes.

Coincident with the exchange offer to the old note holders an additional 500,000 of the 6% convertible notes will be offered to them for cash at par and accrued interest. The notes available for cash subscription will bear the same terms as the convertible notes offered in exchange for the presently outstanding notes.

The company is opening a small factoring office in New York City to handle some special business directed to it by one of its Canadian customers.

The company has also applied for a change in name and while the new convertible note interim certificates will bear the name of Commodore Sales Acceptance Limited it is hoped that the new name of Atlantic Sales Acceptance Limited will be granted by the Ontario authorities by the time definitive convertible notes are available.

It is presently planned that within a reasonable time after completion of the above financing that application will be made to make the company a public one."

The first meeting of the board of Atlantic Acceptance where the change in the financing of Commodore Sales Acceptance was mooted was held on June 28. Here there was a statement by C. P. Morgan that the board of directors of Commodore Sales Acceptance had approved an issue of \$1,000,000 of 15-year convertible debentures, a statement which finds no confirmation in any minute of the directors of the latter company who had not met since March. Two things were decided upon: first, to exchange the present holding of \$201,000 term notes and purchase up to \$400,000 of the new debentures; secondly to authorize the chairman and the secretary to buy not more than 10,000 shares of Commodore Sales Acceptance from the existing shareholders at a price not in excess of \$4 per share. No doubt Atlantic's position would have been precarious had it continued to hold only \$201,000 of a total of \$500,000 of notes issued once convertibility had been achieved. The approval of the debenture issue announced by the president of Atlantic to his board on June 28 was not sought by the president of Commodore Sales Acceptance from his board until August 24, and on that day two meetings of the directors of the latter company took place. The first meeting was devoted to the troublesome additional shares, since the company's solicitors had advised the board that they were not entitled to rescind an issue, or be it said to enlarge the board of directors, without a special resolution approved by a general meeting of the shareholders, and to establishing a definitive list of the company's shareholders. The second

meeting held the same morning proceeded with the task of authorizing the issue of \$1,000,000 6% 15-year convertible debentures, of which one-half would be exchanged for the outstanding term notes and the remainder allotted for increased loans with the result illustrated in Table 26.⁵ At the second meeting Christie, Gregory and Rooney became directors and, since A. L. Beattie of Messrs. Osler, Hoskin & Harcourt is recorded as having attended both meetings, it is reasonable to assume that the company's solicitors were now the same as those of Atlantic Acceptance. L. W. Spencer in fact resigned as a director at this point. Two additional items of business which were transacted at the second meeting on August 24 should be noted. An amended resolution of a special general meeting of shareholders increasing the aggregate maximum value for which shares might be issued from \$750,000 to \$2,500,000 was presented to the meeting and a decision was taken to apply for supplementary letters patent making Commodore Sales Acceptance a public company for submission to a subsequent shareholders' meeting. This meeting eventually took place on September 27, being attended by Morgan, Rooney and Laidlaw with Beattie also present. Morgan held proxies for the Annett interests, the McCullaghs, Wagman, Estelle Kapp, Christie, Gregory, British Mortgage & Trust Company and Atlantic Acceptance Corporation. It approved the transactions of August 24 and confirmed the directors special resolution No. 3 made in relation to the change from private to public status. This is the last heard of the proposal first broached in King's memorandum of June 21 and indeed it was the last meeting of shareholders concerned with other than routine business. It will be seen that neither this proposal nor that to increase the authorized share capital were necessary in the event.

Decision of Atlantic to Acquire the Minority Interest

As a result of the transactions of August 24 Atlantic Acceptance had increased its holdings of Commodore Sales Acceptance obligations, now convertible and a first charge upon the latter company's assets, from \$201,000 to \$511,000. The additional loan of \$310,000 gave it protection against convertibility such as it had formerly enjoyed by virtue of its shareholdings. Annett Partners and Annett & Co. increased their investment by \$72,600; British Mortgage & Trust Co. by \$37,000 to \$74,000; Carman King doubled his investment as did McConnell, Eastman & Co., and Laidlaw and the McCullaghs added to their holdings in modest amounts. Only Renel Investments and Sidney Fromer and William H. Wallace and Van Bur Limited, of the substantial registered noteholders, failed to take advantage of the opportunity, although they duly surrendered their term notes in exchange for the new debentures. The position of Commodore Portable Typewriter, shrouded in the obscurity of the Annett holdings, also remained unchanged.

⁵Exhibit 3244.

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A meeting of Atlantic directors took place in the executive offices on November 17, 1960, consisting of Morgan, Christie, Gregory, Rooney, Martin and Medland and, in the course of transacting a great deal of business, a new direction was imparted to the company's policy toward Commodore Sales Acceptance. The relevant section of the minutes deserves to be quoted:¹

"COMMODORE SALES ACCEPTANCE LIMITED ACQUISITION OF MINORITY INTEREST ACQUISITION

The Chairman explained that the minority ownership of Commodore Sales Acceptance Limited was 47.84% and represented 47,840 shares of common stock which shareholders also owned \$489,000 principal amount of 6% convertible debentures. He further explained that in the interests of future consolidated financial planning that it would be particularly desirable for Atlantic Acceptance Corporation Limited to acquire the entire interest of minority shareholders in the common shares and also in the debentures. It was explained that the principal advantage of so doing would be that the consolidated equity capital and net worth of Atlantic Acceptance Corporation Limited would be materially increased, thus, the consolidated credit base for future borrowings by Atlantic Acceptance Corporation Limited would be correspondingly proportionately increased.

After considerable discussion and upon motion duly made and seconded and unanimously carried (Messrs. Christie and Gregory having declared their interest refrained from voting) it was resolved as follows:

RESOLVED THAT:

The President and the Secretary are hereby authorized and empowered to submit an offer to the minority shareholders of Commodore Sales Acceptance Limited for the purpose of acquiring the minority interest in the common stock of that Company and in the debenture obligations of that Company held by individuals or corporations other than Atlantic Acceptance Corporation Limited and that the offer shall be to acquire such minority shares on the basis of issuing three shares of the common stock of Atlantic Acceptance Corporation Limited in exchange for eight shares of common stock of Commodore Sales Acceptance Limited. In addition, the owners of the Commodore Sales Acceptance Limited debentures, other than Atlantic Acceptance Corporation Limited, shall be offered seventy-five shares of common stock of Atlantic Acceptance Corporation Limited in exchange for each \$1,000 principal amount of Commodore Sales Acceptance Limited debentures.

The President is hereby authorized and empowered in his sole discretion to determine the remaining general terms of the offer including what proportion of acceptance by the offerees shall be required as a condition precedent to the obligations of the Company

¹Exhibit 19.

to complete the purchase and the date when such offer shall be made and shall expire. This offer shall be subject, if necessary, to any required shareholder approval and further, if necessary, to the issuance of Supplementary Letters Patent to Atlantic Acceptance Corporation Limited increasing the number of authorized common shares of capital stock of the Company to provide sufficient treasury shares to enable the Company to meet its obligations under such offer."

First Stage of Acquisition—Payment of \$6 per Share of Commodore Sales Acceptance

The basis upon which Atlantic Acceptance acquired by stages all of the shares of Commodore Sales Acceptance was thus fully set out six months before the transaction was completed, and on February 6, 1961 the president was empowered to purchase for Atlantic as many shares as he could from the minority shareholders at a price not to exceed \$6 a share; this may be compared with the \$4 limit set by the directors on August 24, 1960. Tramiel testified that it was as early as March 1960 when Morgan told him that he wanted to buy at \$6 per share for Atlantic the shares acquired by Helen Tramiel and Estelle Kapp. Tramiel's explicit statement on oath to this effect is difficult to reconcile with his expressed lack of knowledge of any of the other details of the transaction. He said, however, that Morgan, a year before it actually took place, told him that Atlantic wanted to make a substantial investment in Commodore Sales Acceptance and wanted the Tramiel-Kapp shares for this purpose. Both he and Kapp maintained that neither they nor their wives ever had physical possession of any certificates and Tramiel seemed unable to distinguish between the shareholdings of the Commodore Portable Typewriter group and the \$25,000 notes-cum-debentures which represented the money loaned back to Commodore Sales Acceptance.

Kapp's evidence was more coherent on this point, he having taken the trouble to look up the entries in the books of Commodore Portable Typewriter which he had instructed the book-keeper to make. He insisted, however, that he had no recollection of the 250 shares which had been allotted to him for services rendered and for the further subscription of three shares for one at 10¢ per share. He admitted that he had performed no public relations services for Commodore Sales Acceptance and could not explain his signature as a subscriber for shares in the minutes of that company.¹ The fact that Kapp's name does not appear as a shareholder in the definitive list established and approved by the directors at the meeting of August 24, 1960 is explained by the earlier issue of his shares to Mrs. Kapp and Mrs. Tramiel. Tramiel and Kapp asserted that these transactions were performed and the share certificates were retained in the offices of Annett & Co., and it is possible that

¹Exhibit 60.

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the two promoters of Commodore Portable Typewriter knew as little about it as they now maintain. In any event they did not reap the ultimate reward.

Mr. B. W. McLoughlin of Touche, Ross, Bailey & Smart found in the files of Atlantic Acceptance a handwritten schedule of the stock acquired by the company at \$6 per share which he offered in evidence² and is reflected on Table 27.³ This lists a total of 18,318 shares acquired for an aggregate amount of \$109,908. Van-Bur Ltd. and William H. Wallace each sold 2,000 shares registered in their name in April, 1961; Annett Partners Limited are shown as having sold 3,072 shares in March registered in the name of Calder & Co., a street name used by the Bank of Nova Scotia Agency in New York and adopted by Alan Christie with a view to making the shares more readily acceptable as collateral; Annett Partners Limited again in the amount of 4,710 shares, registered in the name of Calder & Co. and various employees of the Annett firm including King, which were identified as Christie's to the number of 310 and Mrs. Christie's in that of 4,400; Laidlaw's 1,536 shares were acquired on February 27; and Netherlands Overseas Corporation of Canada Limited sold 5,000 shares to Atlantic on February 16. The last group was registered in the name of Annett & Co. in respect of 1,000 shares, and of Estelle Kapp and Helen Tramiel in denominations of 125, 375 and 1,500 shares each. Netherlands Overseas Corporation was acting, as it turned out, as C. P. Morgan's broker and, on February 17, J. R. Shemilt of that firm wrote a letter to Morgan⁴ acknowledging receipt of the seven certificates registered accordingly. Morgan now had in his hands not only the 4,000 shares of Mrs. Tramiel and Mrs. Kapp but an additional 1,000 shares registered in the name of Annett & Co.

Second Stage: Exchange of Atlantic Shares for Commodore Sales Shares and Debentures

The Atlantic directors on April 27 allotted 47,745 shares to the completion of the acquisition of the ~~shares of debentures~~^{*} held by the minority group, in accordance with the plan of November 17 of the previous year. The minutes record that Christie, Gregory, Wallace and Medland declared their interest in the transaction and refrained from voting. It is now established that Medland refrained from voting for the reason that he did not approve of the course taken, pointing out that he had been offered shares of Commodore Sales Acceptance quite recently at a lower price than \$7.50 which was the result of the contemplated exchange. Christie said that this was impossible and Med-

²Exhibit 3249.

³Part Exhibit 574.

⁴Exhibit 3275.

land, who had been offered the stock by King, did not press the matter, and indeed in his evidence to the Commission attributed his refusal to vote to the reflection that "these fellows were making a good thing out of it". At the time of this meeting Atlantic stock was selling at its high for 1961 of \$22 per share, whereas in 1960 it had sold no higher than \$16.50. No declaration of interest or disclosure of the arrangement with Tramiel and Kapp were recorded as having been made by Morgan.

Two further schedules of the same nature as that dealing with the sale to Atlantic of shares of Commodore Sales Acceptance at \$6, written in the same hand, were discovered in Atlantic's files and produced by McLoughlin. Their combined effect may be observed on Table 27. The first deals with the exchange of eight shares of Commodore Sales Acceptance common stock for three shares of Atlantic. British Mortgage & Trust Company exchanged 12,420 of the former for 4,657 of the latter, including the 4,000 shares purchased from Fromer and Renel Investments on June 30, 1960 at a price of \$4.05 each and 4,000 shares acquired from Harry Wagman on September 20, 1960 at \$4.75. R. J. McCullagh received 1,164 Atlantic shares for 3,104 of Commodore Sales Acceptance, Mrs. McCullagh 1,260 for 3,360, Prismac Limited 937 for 2,500 and Annett Partners Limited 3,052 for 8,140.¹ Instructions to issue the appropriate number of shares of Atlantic Acceptance were given to the Chartered Trust Company under seal and over the signatures of C. P. Morgan and B. L. McFadden on May 11. The second list² sets out details of the transaction whereby the holders of Commodore Sales debentures received 75 shares of Atlantic common stock for each \$1,000 of debentures held. For \$99,000 of debentures British Mortgage & Trust received 7,425 shares; Van-Bur Ltd. and William H. Wallace received 937 and 938 shares respectively; J. C. Laidlaw received 1,095, Mrs. McCullagh 2,325, Robert J. McCullagh 2,205, George W. McCullagh 375, Netherlands Overseas Corporation 2,625, Trustees of the Eaton Retirement Annuity Plan 3,750, James E. McConnell 3,750 and Annett Partners Limited 11,250 shares. The schedule shows that in the case of Netherlands Overseas Corporation the debenture certificates registered in the name of Annett Partners add up to \$25,000 only, and an additional \$10,000 required to make up the total of \$35,000 worth of debentures attributable to Netherlands Overseas Corporation must be looked for among the certificates listed under the name of Annett Partners Limited. The certificate in question is No. 50 and, when included in the amount of debentures offered by Annett Partners, produces a total of \$160,000 and is thus recorded although the sum attributable to the 11,250 shares received by Annett Partners was \$150,000. This odd juxtaposition of figures would not be remarkable

¹Exhibit 3255.

²Exhibit 3257.

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were it not apparent that C. P. Morgan's account at Netherlands Overseas Corporation had been credited with \$35,000 worth of debentures.

A total of \$489,000 of debentures accordingly produced 36,675 shares which Atlantic caused to be issued by the Chartered Trust Company for those entitled to them as listed above. The 11,250 shares issued to Annett Partners were dealt with more circumspectly. For reasons which are not clear, but which strongly imply concealment, these shares were directed by Atlantic to be issued in five certificates representing 4,950, 2,385, 2,025, 1,800 and 90 shares. These awkwardly-contrived denominations were then credited to accounts of A. T. Christie in respect of 1,440 shares, Kathleen Christie 4,125 shares, C. G. King 4,035 shares, G. W. Ford 150 shares and W. P. Gregory 1,500 shares.

The Rôle of Netherlands Overseas Corporation Canada Limited: J. R. Shemilt

The activities of Netherlands Overseas Corporation must again be referred to. On the day of his acknowledgment of receipt of 5,000 shares of Commodore Sales Acceptance stock, February 17, 1961, Shemilt apparently wrote another letter to C. P. Morgan.¹ It reads as follows:

"We hand you herewith certificates No. CD46, CD47, and CD55, totalling \$25,000.00 par value Commodore Sales Acceptance Limited 6% Convertible Debentures, due August 15th, 1975, fully registered in the name of Annett Partners Limited with power of attorney attached. Payment for these debentures in the amount of \$25,100.00 has been debited to your account with us.

We would appreciate it if you would sign the enclosed copy of this letter and return it to us as a receipt for our files."

At the foot of the letter is the legend, "Certificates Received February 17, '61", with the signature of C. P. Morgan inscribed. The other records for Morgan's account at Netherlands Overseas cast considerable doubt upon the ingenuousness of this document. An entry on the ledger card² for May 8 shows the account being credited with the proceeds of 2,625 shares of Atlantic Acceptance in the amount of \$56,142.50 of which \$52,500 would be attributable to \$35,000 in debentures under the terms of the exchange. Advice slips of the firm³ indicate that Morgan's account was credited on April 25 in terms of the following note:

"\$35,000 par value Commodore Sales Acceptance Limited. 6% Debentures, due August 15, 1975 registered in the name of Annett Partners Limited, and endorsed in blank. To be converted into 2,625 shares Atlantic Acceptance Corporation Limited, common shares."

¹Exhibit 3274.

²Exhibit 3271.

³Exhibit 3276.

then on May 10 with:

“Interest of Commodore Sales Acceptance Ltd. 6% Convertible Debentures due August 15, 1975—February 15th to April 17th, 1961—\$350.00.”

The same records show that the 5,000 shares of Commodore Sales Acceptance referred to in Mr. Shemilt's other letter of February 17 as being received from Morgan and being registered in the names of Annett & Co. and Helen Tramiel and Estelle Kapp were sold according to contracts S-482 and S-483, both dated February 10 for settlement February 15, in two lots, one of 3,000 shares and the other of 2,000 shares, described as “over the counter”, a meaningless division since Atlantic Acceptance was buying the whole 5,000 unless confusion of the identity of the transaction was being deliberately sought. Contract P-502, also dated February 10, announces the purchase of \$25,000 worth of Commodore Sales Acceptance debentures, but there is no similar document referring to the additional \$10,000 of debentures with which Morgan's account was credited.

Examination of this transaction may be briefly concluded by saying that C. P. Morgan, the holder of only four shares of Commodore Sales stock expressed to be held in trust for Atlantic Acceptance, received a total of \$72,500, less brokerage, for the sale of 5,000 shares to Atlantic at \$6 per share and for the conversion of \$35,000 worth of Commodore Sales Acceptance debentures to Atlantic stock by transfer on the basis of 75 common shares of Atlantic for each \$1,000 of debentures, based upon a valuation of Atlantic shares at \$20. Only 25,000 of the debentures are traceable to Commodore Portable Typewriter but all the shares may be attributed to the principals of that company. On the advice of Morgan, perhaps transmitted in part by Harry Wagman, journal entries, and only journal entries, were made in the books of Commodore Portable Typewriter⁴ showing a reduction of that company's debt to Atlantic Acceptance and Commodore Sales Acceptance. This was realized (1) by a cheque of Netherlands Overseas Corporation to Commodore Portable Typewriter in the amount of \$24,992.50 dated February 17, deposited in the payee's special account with Commodore Sales Acceptance,⁵ and (2) by recording the payment of a debt of Commodore Portable Typewriter to Commodore Sales Acceptance by Mrs. Tramiel and Mrs. Kapp in the amount of \$25,000 for which in due course they received preference shares of the former. The journal entries do not reflect the payment by Netherlands Overseas Corporation into the special account and Kapp, in his evidence to the Commission, disclaimed any knowledge of this, pointing out that the deposit stamp on the back of

⁴Exhibit 2131.

⁵Exhibit 3640.

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the cheque was not the same as that used by Commodore Portable Typewriter, a fact which was evident from comparison of the exhibits.⁶ The special account referred to was a commonplace of the factoring procedure adopted by Commodore Sales Acceptance and enabled payments for accounts receivable to be made by cheque to Commodore Portable Typewriter and then removed by transfer to the general account of Commodore Sales Acceptance, without the maker of the cheque being aware that the recipient of the funds was actually the factoring company. The use of a different deposit stamp for the special account is thus explained as a face-saving device to relieve the trading creditor from any stigma that might attach to discovery by its debtors that it was involved in what Morgan referred to as "secondary banking".

Summary of Acquisition by Atlantic of Minority Interest in Commodore Sales Acceptance

The whole transaction, which has been dwelt upon at some length because of the large expenditure of Atlantic money and the close association with the company of many persons who made substantial and questionable profits out of it, may be conveniently summarized as follows:¹

Commodore Sales Acceptance Limited incorporated March 4, 1959. On March 6, 1959 6 shares were issued to incorporating shareholders according to the minutes. Between May 20, 1959 and December 26, 1959 an additional 99,996 shares were issued. This must have been slightly in error because the financial records of the company subsequently show two less shares issued than the 100,002 share issue indicated by the minutes of directors meetings. These shares were issued at prices of 10¢, 50¢ and \$1.00 per share.

Commodore Sales Acceptance received the following amounts:

For issue of Debentures	\$1,000,000.00
For issue of 100,000 common shares	33,650.00
	<u>\$1,033,650.00</u>

Atlantic Acceptance paid the following amounts into the treasury of Commodore Sales Acceptance

For the purchase of Debentures	\$511,000.00
For the purchase of Common	
Shares	<u>15,953.50</u>
	<u>526,953.50</u>

The balance of debentures and shares purchased by minority interests for	<u><u>\$ 506,696.50</u></u>
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⁶Exhibit 3641.

¹Exhibit 576.

Atlantic Acceptance purchased the entire minority interest in the following manner:

Between January 1, 1961 and May 15, 1961

18,318 shares acquired for cash at \$6.00 per share	\$ 109,908.00
29,524 shares acquired for 11,070 shares of Atlantic Acceptance valued at \$20 per share which is equivalent to a price of \$7.50 per Commodore Sales share	221,400.00
\$489,000 6% Convertible Debentures exchanged on the basis of 75 Atlantic Acceptance shares for each \$1,000 debenture	733,500.00
<hr/>	
Total consideration paid by Atlantic Acceptance for shares and debentures held by minority interest	\$1,064,808.00
Net cost of shares to minority interest	506,696.50
<hr/>	
Profit realized by minority interest during the two-year period	\$ 558,111.50
<hr/>	

The last annual statement of Commodore Sales Acceptance which would have been available to shareholders of Atlantic Acceptance, or any one else at the time when this strenuous effort was made to acquire the interest of the minority shareholders, would have been that for December 31, 1960. Accounts receivable, less holdbacks and unearned interest, amounted to \$2,035,451 due from 21 borrowers, with \$207,000 owing by Aurora Leasing Corporation, \$111,644 by American-Marsh Pumps (Canada) Limited, \$388,200 by Pro Musica Limited, \$789,270 by Commodore Portable Typewriter Limited, \$42,630 by Calcutta Holdings Limited, \$117,704 by Canada Motor Products Limited, and \$189,475 by Canadian Nevil Enterprises Limited, to name only the larger loans made to unknown companies which, had they inquired, should have caused concern to the Atlantic directors. The net income earned was \$45,203 and the book value of the common stock was 89¢ per share. Although a dividend of 10¢ per share had been paid in 1959 none was paid in 1960.

Profit and Complicity of the Directors and Others

The effect of exchanging three shares of Atlantic Acceptance at a valuation of \$20 per share (not unjustified at the prevailing market price) for eight shares of Commodore Sales Acceptance was to create an artificial value for the latter of \$7.50. Since the holders of Commodore Sales Acceptance debentures received 75 shares of Atlantic stock for each \$1,000 of debentures held, the effect was to increase the value

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of the debentures by 50% over what was expressed on their face. The creation of debentures with their valuable privilege of conversion, even though suspended until August 15, 1961, and their substitution for term notes due on December 31, 1964 was the excuse for the holders of the minority interest in Commodore Sales Acceptance selling out to Atlantic on highly advantageous terms, but it was an excuse provided by a board of directors the majority of which were directors of the purchasing company. Of these, the position and the responsibility of C. P. Morgan were pre-eminent. On the assumption that Atlantic Acceptance and Commodore Sales Acceptance received the full benefit of the reduction in indebtedness by Commodore Portable Typewriter referred to above, the cost to him of his participation was \$50,000. At a valuation of \$20 each for Atlantic shares his \$35,000 worth of debentures was worth \$52,500 and the proceeds of the sale of 5,000 shares of Commodore Sales Acceptance to Atlantic at \$6 amounted to \$30,000. We have seen, however, that he sold through Netherlands Overseas Corporation the 2,625 shares of Atlantic received in exchange for \$35,000 of debentures above the \$20 valuation for \$56,142.50. He had, as it were, accounted to Commodore Portable Typewriter for \$25,000 in debentures and \$25,000 in shares and he realized \$56,142.50 in respect of the debentures and \$30,000 in respect of the shares which found their way into his account at Netherlands Overseas Corporation. There is no record of his having paid anything for the additional \$10,000 debenture so carefully omitted from the correspondence and trading records of Netherlands Overseas Corporation or for the additional 1,000 shares apparently held by Annett & Co. for Tramiel and Kapp. His profit, assuming that the additional \$10,000 debenture and \$1,000 in shares were gifts from Annett & Co. and Tramiel and Kapp respectively, was \$36,142.50. Assuming the most in his favour and the existence of records of payment not available to the Commission, it could not have been less than \$26,142.50. It is a matter of only passing but ironic interest that Morgan rebuked Robert McCullagh for selling his and his family's Atlantic shares acquired on this occasion at a price which, according to Laidlaw, was about \$24 a share.

While all the minority shareholders made a profit out of the shares and debentures of Commodore Sales Acceptance, it is only necessary to mention the names of those who, by virtue of their position or function, should not have done so, particularly at the expense of the company of which they were directors and to which their obligation was fiduciary. Their profits, notional or actual, have been estimated on the basis of one share of Atlantic common stock being worth \$20. Alan Christie pointed out in his evidence that he had acquired on the advice of Carman King his position in Commodore Sales Acceptance before he became a director of Atlantic; nevertheless he became one on March

17, 1960 and was elected a director of Commodore Sales Acceptance, in which Atlantic maintained a controlling interest, on August 24, 1960. He exchanged \$19,200 worth of debentures and sold for cash, on March 8, 1961, 3,382 shares of Commodore Sales Acceptance for proceeds which exceeded cost by \$27,570.60. For his shares he received only \$6 each. He said that the sale as early as March 7 was probably due to his uneasiness at the large profits being made under the circumstances which had been adumbrated and approved on November 17, 1960. His wife, Kathleen Christie, for whose financial transactions he accepted responsibility, made a profit on this basis of \$57,420. Wilfrid P. Gregory, Q.C. president of British Mortgage & Trust Company a director of Atlantic since April 10, 1959 and a director of Commodore Sales Acceptance since August 24, 1960, made a profit of \$21,480, none the less a profit because he did not sell his Atlantic shares.¹ Gregory's company, which exchanged its \$99,000 of debentures for \$148,500 worth of Atlantic stock, had acquired since November 9, 1959, 12,420 shares of Commodore Sales Acceptance, 4,000 of them being from Harry Wagman, at a cost of \$39,844 and made a profit of \$102,796. For an Ontario trust company of venerable aspect and unblemished reputation to make an investment of this magnitude in a private company making loans at substantial risk was remarkable enough; to make it in a minority interest of a private company which was absolutely controlled by another is, on the face of it, such an act of folly as can only be explained, though not justified, by prior and certain knowledge of a forthcoming profit. Those who were not directors of Atlantic but, as directors of Commodore Sales Acceptance and intimates of Morgan, Christie and Gregory, profited from the transaction, are scarcely less culpable. Of these Carman G. King played a leading part. He was the principal Annett partner involved in the affairs of Commodore Sales Acceptance from start to finish, and it was in his office that all, or nearly all of the transactions in notes, debentures and shares took place. He had, however, no obligation to Atlantic Acceptance and, were it not for the fact that without the assistance of Annett & Co. what was done could not have been done on the scale or with the degree of concealment achieved, he might only be regarded as abnormally acquisitive. The excess of his proceeds over costs of sale was \$59,882.10, but he testified that he, Christie and Gregory sold their shares at \$22 and borrowed 5,000 shares from British Mortgage & Trust by buying and reselling them after 15 days in a manner which will be referred to again.

The position of others who profited was of a different order. Laidlaw, a director of Commodore Sales Acceptance, and an associate and employee of C. P. Morgan, made \$16,016.80. Harry Wagman, C.A., auditor and indeed book-keeper of Commodore Sales Acceptance, made

¹Exhibit 3266.

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\$17,700 out of a sale of 4,000 shares to British Mortgage & Trust Company which grossed \$19,000. Tramiel and Kapp, who had no duty to Atlantic and were perhaps unwitting contributors to Morgan's improper gains, recovered their company's investment and not less than \$23,875 and perhaps as much as \$25,000 in profit. William H. Wallace, a director of Atlantic since April 10, 1959 but not a director of Commodore Sales Acceptance until May 15, 1961, made a profit of \$17,600. A. C. Rooney had no pecuniary interest in Commodore Sales Acceptance but he was a director of both companies at the material time and knowledge of what was going forward must be attributed to him. D. R. Annett made a profit in his own name on the basis of the \$20 valuation for Atlantic shares of \$3,600 but no attempt is here made to analyze the substantial profit made by the Annett firm in which King and Annett must have participated, since it would include the tedious and perhaps irrelevant examination of the clients' ledgers to show what was made not only on the debenture conversion and share transfer in the final stages but in the sale to customers of shares acquired at 10¢, 50¢ and \$1 per share in 1959. For example Christie, who brought his records of trading with him when he testified before the Commission, bought \$14,000 in notes at par and 560 shares at 50¢ per share on King's recommendation in July of 1959 and these shares, according to the share transfer records,² were part of the 1,958 acquired by Annett & Co. in May for 10¢. Of the shares offered to Atlantic by Annett & Co. in 1961 at \$6 per share, only Christie's were involved.

Explanation to the Income Tax Authorities

A formal comment on the efforts of Atlantic Acceptance to acquire complete control of the subsidiary company, which its president and his friends had created and fostered with continuous infusions of Atlantic funds, was given to the Taxation Division of the Department of National Revenue in a letter dated April 1, 1963.¹ It was signed for Atlantic Acceptance by Davidson as secretary-treasurer after being re-drafted by Messrs, Osler, Hoskin & Harcourt. In fairness the text, at least, should be quoted in full:

"In your letter of February 21, 1963, you requested certain information in connection with the acquisition by this Company of securities of Commodore Sales Acceptance Limited ('Commodore').

Attached is a list of the persons from whom Atlantic Acceptance Corporation Limited ('Atlantic') acquired the minority interest in the common stock of Commodore during 1961 (Exhibit 'A'), and also a list of the persons from whom Atlantic acquired \$489,000. principal amount of Commodore debentures during 1961 (Exhibit 'B').

²Exhibit 62.

¹Exhibit 3283.

As of December 31, 1960, Atlantic owned 52.158% of the outstanding shares of Commodore and 51.10% of the outstanding 6% convertible debentures of Commodore.

Atlantic decided that it was in the best interests of both Atlantic and Commodore to have Atlantic acquire the shares and debentures held by the minority shareholders and debentureholders.

You will see from the attached Exhibit 'A' that Atlantic acquired 18,318 shares of Common stock from minority shareholders of Commodore for cash at \$6.00 per share. This occurred early in 1961. The remainder, namely, 29,524 shares of Commodore common stock were acquired thereafter on the basis of three (3) common shares of Atlantic for eight (8) shares of Commodore.

You are referred to Exhibit 'B' which shows that the entire principal amount of Commodore debentures held by individuals other than Atlantic, i.e. \$489,000 were acquired by Atlantic on the basis of seventy-five (75) common shares of Atlantic for each \$1,000.00 principal amount of Commodore debentures.

It should be noted that the debentures in question were convertible into common stock of Commodore at \$5.00 per share, and that the right to convert accrued to the debentureholders on and after August 15, 1961.

It became apparent to Atlantic early in 1961 that if Atlantic hoped to acquire the minority interest in the Commodore shares, that the imminence of the right of the debentureholders to convert necessitated the acquisition not only of the common stock, but also the debentures and that consideration in excess of \$6.00 per share would have to be offered since only 18,318 shares out of a total minority interest of 47,842 shares had been acquired at \$6.00 per share.

In view of this, and in an attempt to acquire all of the outstanding debentures in the mutual interests of both Atlantic and Commodore, a conversion price was set by the directors of Atlantic at \$7.50 per share which was a fair and reasonable valuation of the Commodore shares under the circumstance.

The value of the Atlantic common stock per share at the time of conversion, as quoted by the Toronto Stock Exchange for approximately one month prior to the date of acquisition of the Commodore shares and debentures in exchange for Atlantic common stock, was \$20.00 to \$22.00 per share.

The directors established the price of \$20.00 per share as the fair and reasonable value of the Atlantic common stock issued on conversion, hence, on this basis, the conversion value of the common stock at the rate of three (3) shares of Atlantic common for eight (8) shares of Commodore common, was \$7.50 a share for the common stock of Commodore.

On or after August 15, 1961, the debentureholders, under the terms of the debentures, could have converted each \$1,000.00 of debentures into 200 shares of Commodore common stock, thus, if the fair and reasonable value of the Commodore common stock was \$7.50 per share, it

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followed that the fair and reasonable value of each \$1,000.00 principal amount of Commodore debentures was \$1,500.00.

At the time of the acquisition of the shares and debentures of Commodore by Atlantic, the shareholders and debentureholders (other than Atlantic) consisted largely of people to whom an investment in Commodore had been recommended by Annett & Company Limited of Toronto, Ontario. When Atlantic decided to attempt to acquire the outstanding shares and debentures of Commodore, not owned by Atlantic, Atlantic negotiated the terms of the acquisition, first on a cash basis, and later on the basis of an exchange of common stock of Atlantic, with Annett & Company Limited, whose recommendation was subsequently accepted by the investors in Commodore.

It should be emphasized that since Atlantic is a public Company whose common shares are listed on the Toronto Stock Exchange, the directors of Atlantic felt they had a duty to establish a fair value for the Atlantic shares and also to be satisfied that the values were fair and reasonable. In like manner, Annett & Company Limited had a similar responsibility to their clients in recommending the values on which the transaction should be completed.

In your letter of February 21, 1963, you refer to a 'premium' paid by Atlantic on acquisition of debentures. This is not an accurate expression having regard to the facts of the situation. The price paid for the debentures as previously stated was materially influenced by the conversion privileges attaching to the debentures which materially added to the value of these debentures and by the fact that Atlantic found it impossible to acquire the common shares in sufficient quantity into which the debentures could be converted at a cash offering price of \$6.00 per share. As previously stated, the price paid for the debentures was, in fact, what was considered by Atlantic to be the fair value of the debentures under the circumstances.

We consider, and we believe that the persons from whom we purchased shares and debentures of Commodore believed, that the values determined as set forth above, were fair market values for the securities involved in the exchange.

Certain other factors which were particularly material influenced the decision of Atlantic in this matter.

Commodore was incorporated on March 4, 1959. The original plan was to keep the equity capital at a minimum and for the shareholders to provide additional funds in a ratio equal to their stock ownership.

During 1959, the shareholders subscribed for \$500,000 of 6% notes, due December 31, 1964, however, additional funds were required and Atlantic *alone* provided an additional \$100,000 evidenced by a demand promissory note.

During the year 1960, the original \$500,00 of promissory notes referred to above, were exchanged for 6% convertible debentures due August 15, 1975, and a further \$500,000 of debentures were issued to the shareholders, thus, at the end of 1960, \$1,000,000 principal amount of such debentures were outstanding and owned substantially

by the shareholders in proportion to their holdings of capital stock of Commodore. During 1960, however, Commodore required additional funds which, unfortunately, were not available from the minority shareholders and Atlantic found itself in the position of having to supply an additional \$600,000 of funds without assistance from any of the minority shareholders.

It became increasingly apparent that the minority shareholders were either unable or unwilling to provide funds in sufficient quantity to enable Commodore to enjoy its full profit potential. This condition, perhaps more than any single element, precipitated the plan instigated by Atlantic to acquire the minority interest in Commodore.

The facts are, that up until the end of 1960, the minority shareholders were trading on the equity of the demand loans made by Atlantic to Commodore which, as stated above at December 31, 1960, aggregated \$700,000. Atlantic could no longer continue to be philanthropic in the interests of the minority shareholders. Unfortunately, the minority shareholders, either by design or from necessity, were unable or unwilling to contribute their proportionate share of capital required for the further expansion of Commodore. They were well aware of the profit potential and were also aware of the decision of Atlantic to form a wholly owned subsidiary company of Commodore to operate in the same line of business in the U.S.A. but were uncooperative in providing their share of the means to develop this potential.

Obviously under those circumstances, the minority shareholders and convertible debentureholders of Commodore assessed the value of their interest in Commodore on three elements, namely, past earnings, profit potential and a nuisance value.

The soundness of the planning by Atlantic and the reasonableness of the consideration paid can be best illustrated by the fact that after Atlantic acquired the interest of the minority shareholders in the stock and debentures of Commodore, the investment of Atlantic in demand notes of Commodore increased from \$700,000 at December 31, 1960 to \$5,485,960 at December 31, 1961, and to \$13,200,000 at December 31, 1962. Atlantic is convinced that the previous minority shareholders would not, or could not have provided their share of the funds in this amount required to develop Commodore and consequently, the profit potential of Commodore would have been dissipated had Atlantic failed to acquire the interests in the minority shareholders.

The negotiations by Atlantic with the minority shareholders were definitely at arms length. The principal minority shareholder in fact, felt very convinced that the price of \$7.50 per share offered for the Commodore stock was unreasonably low and only after extended negotiations was such shareholder in question willing to sell at that price.

As further evidence that the values determined for the stock and the debentures were fair and reasonable, the following is particularly significant. The earnings per share of Commodore for the years 1959 to 1962 inclusive, were respectively, 22¢, 45¢, 89¢ and \$1.10.

If the earnings for 1961 and 1962 were capitalized on a ten year

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basis, which we consider to be reasonable, the value of the Commodore common stock would be \$8.90 per share and \$11.00 per share respectively. This is considerably more than the price paid for the stock, namely, \$7.50.

If, on the other hand, the earnings for 1961 and 1962 were adjusted to eliminate inter-company management fees, the capitalized earnings for those two years would be \$14.20 and \$17.60 respectively, i.e. in excess of twice the price paid for the Commodore common shares.

We shall be glad to review this in further detail with you if you consider it necessary or helpful."

It should be remembered in considering this document that the income tax authorities were primarily interested in the 50% premium paid on the conversion of Commodore Sales Acceptance debentures and the valuation of Commodore Sales Acceptance shares. Some of the statements contained in it require critical examination. In fact, as already noticed, the Atlantic board made its decision to acquire the debentures not early in 1961 but on November 17, 1960, barely three months after quite unnecessarily creating them. The contention that Commodore Sales Acceptance required additional funds which "unfortunately were not available from the minority shareholders" was in the highest degree disingenuous because Atlantic controlled its lending policies and was quite capable of supplying any additional funds required by borrowers from its own industrial division. The statement that "Atlantic could no longer continue to be philanthropic in the interest of the minority shareholders" must provoke a smile or an exclamation, depending upon the temperament of the reader. A more melancholy reaction is produced by reflecting on "the soundness of the planning by Atlantic" resulting in loans to Commodore Sales Acceptance of \$13,200,000 by the end of 1962. If the "principal minority shareholder" with whom Atlantic dealt, among others, "at arms length" was British Mortgage & Trust Company, it was represented by its president, Mr. Gregory, on the boards of both companies. He was described by Rooney as having played the part of the devil's advocate in urging a price higher than \$7.50 a share, and by Christie as having said that Atlantic was getting the shares of Commodore Sales Acceptance at a good price, whereat Christie with good reason said: "Why not? We are all directors of Atlantic". All the evidence indicates that it was on this occasion, and this occasion alone, that Gregory had anything to say on the subject and the impression he gave both Christie and Rooney was that his contentions were only half-serious. If on the other hand the principal minority shareholder was Annett & Co., or Annett Partners, it may be recalled that Annett & Co. were fiscal agents for Atlantic during this period and until 1963 were unlikely to hazard much in the interests of the minority shareholders, even if there had been any real grounds for not accepting a windfall of almost extravagant proportions. Needless to say, Exhibit "A" to this

letter, showing the minority shareholders from whom Commodore Sales Acceptance shares were acquired, does not identify the actual owner of those attributed to Netherlands Overseas Corporation or those whose holdings were included in those of Annett Partners, and the same is true of Exhibit "B" with respect to the debentures.

Light is cast upon Morgan's motives at the time of the incorporation of Commodore Sales Acceptance by the evidence of Rooney² who testified that Morgan told the Atlantic directors that the reasons for taking only a 51% interest in the new company were, first, that Commodore Portable Typewriter wanted an interest and, second, economy. Morgan had said that the introduction of Commodore Portable Typewriter to Atlantic had been made by the Bank of Nova Scotia, and Rooney maintained that he never knew of the 24% interest of Annett & Co. His later impression was that Tramiel and Kapp had taken no pecuniary interest in Commodore Sales Acceptance and he was not aware of the means by which they had been put in funds to do so. Nor did he know of the position taken by British Mortgage & Trust and Wilfrid Gregory until the spring of 1961. He said he was "vaguely aware" of the enlargement of Atlantic's investment made to maintain its 51% position of control but not of the specific form of the investment. He knew of the existence of other shareholders because of the appearance of new directors on the Commodore Sales Acceptance board, particularly Laidlaw with whom he was acquainted. Finally he said that he did not know of Christie's investment in Commodore Sales Acceptance until just before he testified to the Commission, but he admitted that Christie had declared his interest at a meeting of the directors of Atlantic. Christie himself said that he had first heard of the formation of Commodore Sales Acceptance from Carman King at a time when he was not an officer of Great Northern Capital Corporation or a director of Atlantic Acceptance and that he had suggested that the factoring of Commodore Portable Typewriter should be done by Atlantic itself, whereupon King told him that Tramiel and Kapp were the stumbling-blocks.³ King, however, gave him an optimistic account of the business of Commodore Portable Typewriter from time to time, mentioning their sales to Eaton's and Simpson's in Toronto and to Macy's and other stores in New York where Christie made inquiries personally. From conversations with Morgan he firmly believed that the latter had no interest in Commodore Sales Acceptance.

I accept the evidence of Rooney and Christie on these points. There is no doubt that Morgan concealed his own position in Commodore Sales Acceptance, which depended entirely upon the participation which he had arranged with King for Commodore Portable Typewriter, and there is similarly no doubt that both Morgan and King

²Evidence Volume 90.

³Evidence Volume 91.

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misrepresented the motives of Tramiel and Kapp who were in no position to make terms as to participation with their benefactors. I also accept Christie's statement that he did not know, when he purchased shares and obligations of Commodore Sales Acceptance, that these would be acquired by Atlantic. I have more difficulty with the assertion that he sold all of the shares then held by his wife and himself over the counter through Annett & Co. at \$6 per share, not knowing that they were being bought by Atlantic in March 1961. He was present at the meeting of the Atlantic board on February 6 which authorized the purchase by C. P. Morgan on behalf of the company of all the shares of Commodore Sales Acceptance that he could buy at a price not to exceed that amount, and he testified to his uneasiness about having dealings with the company, a feeling which led him to insist on the final transaction, involving the conversion of the debentures of Commodore Sales Acceptance and the exchange of its shares, be approved by counsel. If he did not actually know who bought his own and his wife's shares at \$6, he should have known, and I am satisfied that he guessed correctly. Furthermore he was present at the meeting of the Atlantic board on November 17, 1960 which had approved of the exact form of the final acquisition, and although as a debenture-holder he was unable to convert of his own volition until after the event, he knew then what his position was and indeed had shared in creating it.

The third representative of Great Northern Capital upon the board of Atlantic Acceptance was W. H. Wallace. He had met Christie when the latter was with the Sun Life Assurance Company in Montreal and they had been next-door neighbours in the Town of Mount Royal. Later in New York the association continued, and here Wallace met King who subsequently recommended the shares of Commodore Sales Acceptance as a speculative investment. Strangely enough, he did not know of Atlantic's interest in the latter until he was compelled to surrender his own interest in May 1961. Since he became a director of Atlantic on April 10, 1959 and since Atlantic had acquired its 51% of Commodore Sales Acceptance the month before, this is just credible. Wallace agreed that the Atlantic annual statement for 1960⁴ listed Commodore Sales Acceptance as a subsidiary and that the 1961 statement set forth the fact that 47,745 shares had been issued "in exchange for minority shareholders' interest in a subsidiary company". Making every allowance for the fact that Wallace's residence and business interests were in Montreal, this lack of knowledge is at once a tribute to Morgan's ability to elude discussion and an indication of inattentiveness on the part of an Atlantic director which was not exceptional.

Wilfrid Gregory owed his introduction to Commodore Sales Acceptance, and indeed to C. P. Morgan, to Carman King⁵ and it was through

⁴Exhibit 41.

⁵Evidence Volume 115.

King that he and British Mortgage & Trust purchased their shares and notes of Commodore Sales Acceptance. As a director of the company from August 1960 onwards he was not aware of any actual meetings of the board in the formal sense of the word, and said that he signed the necessary documents on the occasion and after the conclusion of Atlantic meetings. The location of the offices of Commodore Sales Acceptance at 100 Adelaide Street West was, he said, "beyond my ken or interest". Other than its business being some kind of factoring he knew nothing about it, although he agreed that he must have been told, and he claimed that he had no reason to believe that Atlantic would acquire the interest of the minority shareholders when the investment was made. When this transpired he was not in favour of it because Commodore Sales Acceptance appeared to be doing well; Morgan and Christie had overridden him. He felt that he had made a "reasonable profit" but he had held his Atlantic shares to the end. I have already indicated my view of the participation of British Mortgage & Trust in this enterprise, and I can only add that Gregory's evidence given to the Commission on April 26, 1967 was offered with such apparent indifference as would, in the case of a witness less encumbered by misfortune, have amounted to arrogance. To be sure, it was given early on the first day of his testimony at a time when all observers noted the confidence of his bearing, but it left me with the impression that he had little appreciation of his obligations as a director of Atlantic and as the president and managing director of his trust company, other than to make a profit for the latter. Later he was to confirm this by an interesting statement on morality in business which will be noticed in due course. In the discussion as to the valuation of Commodore Sales Acceptance shares at the meeting of the Atlantic board on April 27, 1961 the advocacy of a higher price was not taken seriously by Christie and Rooney according to their own statements, and apparently not even by Morgan, but it may have been candid enough.

Aubrey Medland also said that he did not know the circumstances of Atlantic's original participation in Commodore Sales Acceptance for the same reason as Wallace, in that it had happened just prior to his re-election as a director. He did not acquire, and was not offered any participation personally until, as he said, about two weeks before the acquisition of the minority interest. King suggested then that he buy shares. He did not do so, and, as mentioned above, he referred to this offer in the meeting of April 27, with which it must have been exactly contemporaneous, as being lower than what was proposed. Christie's expression of disbelief, and the fact that most of his fellow directors were obviously going to do well out of the transaction were sources of irritation, and he was fair enough to say that this was perhaps the reason for his abstention from voting rather than any disagreement in principle with the resolution, although he was not prepared to trust his memory on this point. It is strange that the most inquisitive, and perhaps the

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most conscientious of the Atlantic directors knew at this time almost nothing about the business of Commodore Sales Acceptance or the nature of Atlantic's participation in it, but I am satisfied that Medland made a frank disclosure of what he recollected and did not try to bathe his own position in a favourable light.⁶

Carman King's recollection of the beginnings of Commodore Sales Acceptance was given to the Commission on December 21, 1966, one of several occasions on which he testified.⁷ He said that Annett & Co. had spent some three months in having made by accountants, engineers and business consultants a survey of the possibility of making a public issue on behalf of Commodore Portable Typewriter, and it was only after the firm had concluded that the project was not feasible, and had imparted this view to Tramiel, that Tramiel himself had suggested starting a factoring company in conjunction with Atlantic Acceptance with which he knew Annett & Co. was connected. Tramiel, according to King, went on to describe how he was importing typewriters from Czechoslovakia on the strength of bills of lading from the American Express Company and his order from Eaton's for 100,000 machines payable in 90 days. That this was how the question of approaching Atlantic was introduced, and that this was the first time Annett & Co. had learned about the existing financial arrangements of Commodore Portable Typewriter, is inherently improbable, as is King's subsequent statement that, "if I remember correctly Jack Tramiel said he had \$25,000 to invest". The air of improbability intensifies when, upon being asked by counsel if he were not surprised that Tramiel was in a position to lend \$25,000 to the proposed company, he answered, "I didn't know anything about Mr. Tramiel's stock. I mean, we just met him, and I can't recall, but I thought he said—that he said that he had made this money out of his typewriter business". After three months of careful analysis at what must have been some expense by Annett & Co. one might have thought that not only the ability but the inclination of Tramiel and Kapp to make an investment of this size, when engaged in what was admittedly an unprofitable business which neither the banks nor Annett & Co. could assist any further, would be well understood. More credible is King's statement that once Tramiel had been introduced to Morgan the latter took over the organization of the factoring business and the loaning policy of Commodore Sales Acceptance, and that Annett & Co. had nothing further to do with that aspect. Yet, as between Christie's assertion that it was King who persuaded him to invest in notes and shares of Commodore Sales Acceptance and King's that it must have been Morgan, I have no hesitation in accepting Christie's version. King said that the decision to offer convertible 15-year debentures in exchange for the term notes of Commodore Sales Acceptance was taken in the spring of 1960 and the

⁶Evidence Volume 92.

⁷Evidence Volume 93.

discussions between himself and Morgan about the terms of acquiring the minority interest in November or December of that year. He offered, as one reason for the acquisition, the insistence of the Massachusetts Mutual Life Insurance Company, as a lender to Atlantic, that the company should only have fully-owned subsidiaries, but admitted that Commodore Sales Acceptance was specifically excluded and that, in any event, the trust deed securing the senior notes of Atlantic did not prevent it from continuing to maintain only its 51% interest.

A transaction previously referred to, in which the last ounce of profit was squeezed out of the final exchange of shares and debentures for Atlantic stock, was clearly, if somewhat hesitantly described in Mr. Shepherd's examination of this witness.⁸

"Q. In April, 1961, I take it from the minutes it was already well known to the holders of the minority interest, that although perhaps all formal steps had not yet been taken, Atlantic was going to acquire the Commodore Sales shares and was going to deliver Atlantic shares in payment therefor, is that correct?

A. Yes.

Q. And is it not correct that during the month of April, 1961, you and Mr. Christie and Mr. Gregory sold a number of shares (in your own case it was 3,180) of Atlantic Acceptance on the market, knowing that shortly you were going to receive those shares arising out of this exchange, is that correct?

A. Yes.

Q. Therefore, technically, but only technically, you were short and duly declared yourself short, for a matter of some days; that is, you had sold the stock and you knew delivery was coming?

A. Yes.

Q. Out of this share exchange?

A. But I did not declare that I was short, because in my mind I was not.

Q. I believe on the Annett day—

A. Annett blotter?

Q. Annett blotter, I believe you are recorded there as being short, is that correct?

A. I don't know. I mean, the trading department would know what I was doing, and so that was a requirement that they would state that.

Q. What I wanted to ask you about is at about 1st May, 1961, there was a transaction whereby British Mortgage & Trust delivered to Annetts the 5,000 shares of Atlantic Acceptance which had been owned by

⁸Evidence Volume 93, pp. 12630-4.

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British Mortgage & Trust, and Annetts delivered to British Mortgage & Trust a cheque for \$110,000, being the purchase price at \$22, which cheque was promptly negotiated by British Mortgage & Trust. Annetts then caused the certificate in question to be changed respecting its ownership, so that it was divided and it stood in the name of Annett and Company and delivered those shares in the normal course in settlement of your obligation to deliver shares which had been sold.

Then on 16th May, Annett sold back to British Mortgage & Trust 5,000 shares of Atlantic, using for this purpose, of course, the shares which had come out in connection with the share exchange with Commodore Sales Acceptance for \$110,000. Now, what is that transaction all about?

A. Well, I would say that was—that we had borrowed 5,000 shares from the British Mortgage & Trust, which was a customary thing on the street with brokers and banks and institutions; and the way we did it, I cannot recall that we put through tickets, but we would have to pay a certain value which was \$110,000, and then get the use of the money. We got the shares and then when we received the shares from the Chartered Trust we returned them and the money was repaid.

I would think that that \$110,000 would be debited proportionately to the different accounts that required the shares.

Q. It appears to take the form of a purchase of shares from British Mortgage & Trust and subsequently, approximately 15 days later, a sale back to British Mortgage & Trust of the same number of shares. Could you expand further on your observation that this is the form in which shares are borrowed and replaced?

A. Well, I don't know enough about it. I don't know if this is the customary way that shares are borrowed, but I imagine that in the conversation that probably took place between myself and Wilfrid Gregory, that this is what they wanted. In other words they got the \$110,000, and whether the shares were selling at \$20 at the time and they got \$22, they then didn't want to lose their position in Atlantic shares, and we returned them and they returned the money.

Q. So far as we have found, there is no written documentation relating to this transaction in the form of contracts or undertakings by British Mortgage to buy the shares back, would that be correct?

A. Were there any contracts issued? Did we issue a contract buying the 5,000 shares and then we issue another contract selling them?

Q. I am not aware of this, if it was done, Mr. King.

A. I would think this would be just out of our records, and I wouldn't think that any contract was issued, because we were not really buying the shares and were not selling them: We were just borrowing them.

Q. What was the payment of the \$110,000 to British Mortgage & Trust?

A. That represented \$22 a share on 5,000 shares.

Q. Yes, but could you help us as to how that fits into this pattern of borrowing stock?

A. Well, I just don't know the exact role. You know, you can borrow stock on the floor of the Toronto Stock Exchange, from another broker. Now, I don't know. I know in the bond business that dealers often borrow bonds from banks, usually, and they pay them for the bonds, and they usually pay some margin or some small fee.

Q. Do you recall any discussion in which this transaction was arranged?

A. No.

Q. Do you recall anything more about it than that which you have already testified?

A. I cannot recall anything. I know this, that one of the auditing firms that is working for the Commission, came into our office wanted an explanation of this \$110,000.

Q. Yes?

A. And we couldn't figure it out. I mean, this is quite a while ago. Then we realized that it must be the borrowing of 5,000 Atlantic shares, and this is a customary thing, I would say, in the financial business of Canada.

Q. When you dealt with British Mortgage & Trust, with whom did you deal?

A. With Mr. Wilfrid Gregory."

Although King was a director of Commodore Sales Acceptance until May 15, 1961, he was, by his own account, unaware of the nature of its accounts receivable, except in so far as he believed them to be the factored receivables of Commodore Portable Typewriter. He appears to have been satisfied with the apparent profitability of the company and to have relied upon Morgan and Atlantic for the management of its affairs. His concern as a stockbroker was with the transactions in shares and obligations, and with these he was closely concerned.

Morgan's inveterate "one-handedness" has been referred to before and Atlantic's acquisition of the minority interest in Commodore Sales Acceptance, for the existence of which he alone was responsible, is a good illustration of the left hand not knowing what the right hand was doing. First of all a tentative and instinctive step is taken, providing Atlantic with bare control, and giving room for subsequent manoeuvre within the confines of the holdings of the minority group. Then loans are made not merely to Commodore Portable Typewriter, which is the principal reason for the factoring company's existence, but to other borrowers with large appetites and exiguous assets. Thereafter a situation is created, probably by design but, if inadvertently, with a large measure of incompetence, whereby Atlantic cannot acquire a larger or a total

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interest without conferring substantial benefits on the minority shareholders and, as soon as this becomes apparent, Morgan makes a secret, and therefore dishonest profit initially at the expense of Tramiel and Kapp, yet in such a way as to provide them with compensation; Wagman and King who know most of the real situation of Commodore Portable Typewriter, and who alone are essential to Morgan's method of enriching himself, are handsomely rewarded; the directors of Atlantic are placed in a position where their hands are tied and their sense of duty blunted by their own participation; and the cost of what is hailed as a shrewd stroke of business, but is more recognizable as an expensive blunder, is borne by the shareholders of Atlantic Acceptance to the extent of over half a million dollars of unnecessary expenditure.

2

C. P. Morgan Acquires Aurora Leasing Corporation

Evidence of the acquisition and transactions of Aurora Leasing Corporation was given to the Commission by Mr. C. T. Austin, C.A. of Clarkson, Gordon & Co.¹ The company was incorporated as a private company by letters patent issued under the hand of the Secretary of State of Canada on June 12, 1956 and carried on the business of renting equipment to contractors, during the course of which it acquired as a wholly-owned subsidiary company, Mavety Film Delivery Limited, which held valuable contracts with Twentieth Century-Fox and Famous Players for the delivery of cinematographic film. Minutes of the board of directors dated March 25, 1959 indicate the intention of the directors to wind up Aurora Leasing after submission of the question to a general meeting of shareholders which agreed with this proposal on April 9. Action to wind up, however, was not taken and the company continued its business on a diminishing scale until September 30, 1960, when C. P. Morgan appeared on the scene as a potential purchaser.

Although the board of directors of Atlantic Acceptance had discussed on June 28 of the same year the possibility of forming a subsidiary company to engage in the leasing of plant facilities, it was not as a representative of Atlantic that Morgan appeared, since he was not armed with any authority from the Atlantic board to make the acquisition now contemplated. He had, however, been considering acquiring Aurora Leasing in discussions with Morton W. Rashkis, a Toronto accountant and management consultant who had a minority interest in the company which was controlled by J. George Meckler and M. J. Lazar, both of Bedford, Ohio. An agreement dated September 30, 1960 was concluded between Lazar, C. Powell Morgan and Aurora Leasing Corporation Limited whereby

¹Evidence Volume 9.

Morgan as purchaser agreed to buy 2,770 common shares of Aurora Leasing from Meckler and Lazar, representing a group of selling shareholders.² The agreement recites that the authorized capital of the company consists of 450 unissued preference shares, and 5000 issued common shares without nominal or par value issued—and this agrees with the company's share transfer records—to the following:

Morton W. Rashkis	2,228
Morton Greenspan (in trust for Rashkis)	1
Daniel A. Lang (in trust for Rashkis)	1
J. George Meckler	1,080
M. J. Lazar	935
A. Katz	180
Frances (Fanny) Meckler	175
Abraham Werier	150
Samuel Werier	150
Jack Sturnman	50
Thelma Sturnman	50
	<hr/> 5,000

The "selling group" therefore consisted of all the shareholders except Morton W. Rashkis and those who held in trust for him.

For these shares Morgan was first to pay \$50,000 in Canadian funds; then he was to provide Aurora Leasing with a loan of \$110,000 in United States funds and cause it to pay off certain loans made by shareholders, but specifically excluding a loan from Lavan Trust Company; he would pay off other debts in the amount of \$21,498.60 and secure the payment to Meckler and Lazar by the company of \$44,000 in United States funds for which they agreed to take the company's note in that amount, guaranteed by Morgan and payable on or before January 18, 1961 with interest at 6% per annum. Numerous other covenants were contained in the agreement relating generally to performance of the contract and to the affairs of Mavety Film Delivery, and involved an income tax liability in respect of the year 1959 of \$74,347. On the same day Morgan executed a direction to Aurora, its directors and its solicitor, Mr. Daniel A. Lang, in the following terms:³

"Notwithstanding the terms of an Agreement of Purchase and Sale dated on this date, wherein I was to purchase two thousand, seven hundred and seventy (2,770) common shares of Aurora Leasing Corporation Ltd. from Messrs. Meckler and Lazar, let this be your good and sufficient authority to transfer the said two thousand, seven hundred and seventy (2,770) common shares of the Company to my solicitor, Carl M. Solomon."

²Exhibit 923.

³Exhibit 924.

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In a contemporary transaction on, or at least dated October 14, Aurora agreed to sell to Corporate Plan Leasing Limited (a vehicle of Meckler and Lazar) the equipment subject to leases which it owned, covenanting to discontinue the leasing business until such time as the purchaser disposed of or discontinued the business of leasing, or until the expiration of the leases to which the equipment was subject, or until such time as the existing board of directors of Corporate Plan Leasing ceased to have any substantial financial interest in the company, whichever might occur first. The agreement of purchase and sale⁴ sets the total purchase price at \$190,000 consisting of \$145,000 for the equipment and \$45,000 for good-will, payable by \$50,000 in cash, \$83,883.64 by assumption by the purchaser of the encumbrances on the equipment plus periodic payments as rentals became due less payments required to discharge the encumbrances assumed. The agreement is signed for Aurora by C. P. Morgan and Harry Wagman over the company's seal and there is a similar direction signed for Aurora by Morgan⁵ addressed to Messrs. Lang, Michener & Cranston, the purchaser's solicitors, dated October 14, which was the date of closing, instructing them to pay the balance to "our solicitors, Messrs. Solomon & Samuel". Neither at this time nor thereafter was Morgan a director, officer or registered shareholder of Aurora Leasing Corporation.

Carl M. Solomon

Both the agreements were drawn as appears on their backs by Messrs. Solomon & Samuel, barristers and solicitors of 62 Richmond Street West, a Toronto firm which has been mentioned before under that name or that of its successor, Solomon & Singer. Carl Morton Solomon was called to the bar of Ontario in 1958 and, after only a year of work with established solicitors, set up his own firm in June 1959 with David Murray Samuel, also called in 1958. This association lasted until May 1, 1962 when Samuel withdrew to start his own practice and Solomon was joined by Irwin Singer, qualified in that year. Solomon met Morgan towards the end of 1959 through Walton, Wagman & Co. who had offices in the same building, and, as will be seen, first acted for him and his associates in the John Belli affair. He was an ambitious but inexperienced young lawyer, anxious to do corporation work and looking to W. L. Walton and Harry Wagman to introduce him to it. He was, as he has said, overwhelmingly impressed by Morgan and the position in the financial world which he apparently occupied and looked forward to the day when his firm would do all the legal work for Atlantic Acceptance. The day never came, but Solomon and his partners proved invaluable as an instrument in the subterranean transactions of Morgan, Walton and Wagman which, profitable as they were, would cost him dear in credit and professional reputation.

⁴Exhibit 926.

⁵Exhibit 927.

The general ledger of Aurora Leasing¹ shows a journal entry, dated October 1, crediting the account of C. M. Solomon in trust with \$50,000 and the account of Corporate Plan Leasing with the same amount, with the note: "to record monies paid by latter to former as per agreement". A cheque dated October 16 was drawn on the general account of Solomon & Samuel, made payable to Meckler & Lazar in the amount of \$50,000 and marked "re purchase shares Aurora Leasing Corp. Ltd. by C. Powell Morgan", and the firm's clients' ledger for Aurora Leasing shows \$50,000 coming into the general account from Corporate Plan Leasing on October 17 but going out the day before for that purpose; the account is shown as flat on October 16.² At this point Morgan had acquired, and caused to be transferred to Carl M. Solomon, shares giving control of Aurora Leasing and paid for them with that company's money which did not, as one might have expected, find its way into the solicitors' trust account.

There remained the 2,230 common shares belonging to Morton W. Rashkis. These were purchased, according to the terms of an agreement made between him and Carl M. Solomon, dated November 4, for the sum of \$20,000, \$5,000 having already been paid and acknowledged, \$5,000 being payable on the execution of the agreement on November 4, with the balance of \$10,000 payable in monthly instalments commencing December 1. This payment was actually compounded on January 13, 1961, and at that time Rashkis received a balance which gave him \$9,000 by conceding a discount of \$1,000, so that the total cost of all the 5,000 shares acquired by Solomon for Morgan was \$69,000 of which \$50,000 was in fact Aurora's money.

The Trio Account and Use of Commodore Sales Acceptance Funds

Although the agreement of September 30 between Morgan and Meckler and Lazar provided for the former lending to Aurora the \$110,000 United States funds required to pay off the shareholders' loans, payment was actually made through the Solomon & Samuel general account which received a cheque for \$100,000 in that currency—then at a discount in Canada—from Commodore Sales Acceptance on October 14;¹ it was recorded by Commodore Sales Acceptance as a loan to Carl Solomon in trust and two cheques totalling \$25,000, one being for \$8,333.33 drawn by C. P. Morgan² and the other drawn on account No. 13324 at the Guaranty Trust Company of Canada by William L. Walton, noted as "joint account", for \$16,666.67,³ both in favour of Carl M. Solomon in trust, were deposited in the firm's trust account. The account at the Guaranty Trust Company plays a large part in the joint

¹Exhibit 928.

²Exhibit 692.

³Exhibit 932.

⁴Exhibit 933.

⁵Exhibit 801.

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ventures of Morgan, Walton and Wagman. Passbooks, cheque books, cancelled cheques and deposit books in connection with it were seized by special investigators of the Department of National Revenue from the offices of Walton, Wagman & Co. in December 1963 when they were investigating the affairs of Walton, and were put in evidence by Mr. Thomas McGeachy of that department on March 11, 1966,⁴ while the ledger cards and credit and debit vouchers were offered by Mr. D. C. Dunlop of the Guaranty Trust Company on the same day. It was ostensibly a joint account of W. L. Walton and Harry Wagman, but it was used from 1960 until 1963 to transact business in which they were associated as equal partners with C. P. Morgan. A great many subsequent references to it will be made and in due course it will have to be examined in the light of the evidence given by Walton, Wagman and Morgan himself, but it may suffice here to say that without its discovery and analysis together with documents found in Walton's house it would have proved extremely difficult, if not impossible to unravel transactions which are essential to an understanding of the methods by which these three men, all chartered accountants and two of them practising, enriched themselves at the expense of Atlantic Acceptance, or companies with which it was associated or to which it had lent money. The account was variously known to Walton and Wagman as the "Trio account" or "Account of Three", but hereafter it will be referred to as the Trio account.

On October 16 the shareholders' loans which Aurora had covenanted to pay were duly paid off out of the Solomon & Samuel general account in the amount of \$111,131 from the funds supplied by Commodore Sales Acceptance and Morgan, Walton and Wagman, thus creating debts to them. Commodore Sales Acceptance was paid off in the amount of \$100,000 U.S. funds with interest on December 16, 1960 (erroneously recorded as being December 16, 1961) after a great deal of water had flowed under the bridge. Of the debts remaining in the amount of \$21,498.60 Solomon & Samuel paid \$4,211.13 to Smith, Winston, Wolman, Roth and Smith on November 29 and \$1,237.30 to Messrs. Lang, Michener & Cranston on December 12. Solomon & Samuel received a further \$27,476.42 by cheque from Aurora Leasing Corporation made payable to C. M. Solomon in trust. This cheque⁵ which was found, together with the accountant's working papers which explain it, in the office of Harry Wagman at the time of the Walton seizure, is referred to by a note reading "issue cheque to Solomon in trust re Lavan Trust \$14,000, re loans payable \$9,976.42." The explanation falls short of the amount of the cheque by \$3,500. The only amount corresponding to this in Aurora's indebtedness is a debt to solicitors by the name of Rosenberg, Smith, Walsh & Kroll. The amount of

⁴Exhibits 799-807.

⁵Exhibit 865.

\$9,976.42 is a mystery in that it appears to be a sum left over after the accounts sold to Corporate Plan Leasing were closed off, arising from calculations of deferred revenue and recorded by Aurora as "miscellaneous loans payable" in order to balance its books, by this time in the hands of Walton, Wagman & Co. As it turned out Solomon & Samuel were able to settle the Rosenberg debt for \$2,500, but the \$14,000 payable to Lavan Trust was not paid until 1964 by which time it had grown to \$15,000. The payment then made was quite separate from any of the moneys being disbursed at this point and was made, with funds supplied by Harry Wagman, to Messrs. Allen, Regan & Hunter, acting for a company known as Tapir.

After the payment of the shareholders' loans on behalf of Aurora and with money supplied by Commodore Sales Acceptance, Morgan and the Trio account, Solomon & Samuel had left in their general account a credit balance of \$82.76 from adjustments of exchange. The funds held in their trust account on behalf of Aurora, after the transfer of \$11,000 from the \$25,000 supplied by Morgan and the Trio account, amounted to \$14,000 and were still further depleted by payments to Rashkis for his minority shareholdings and others that have been noticed. Although on December 27 Aurora had recorded in its general journal a credit to C. M. Solomon in trust which included the loan payable to Meckler and Lazar of \$44,000, Solomon did not pay it because he was about to pay out the balance of the moneys held in trust for Aurora to W. L. Walton in trust. For purposes of convenience all the contemporaneous payments of this kind are noted below:

December 16	—	\$12,000
December 30	—	\$24,040
December 30	—	\$60,974.21
December 30	—	\$82.76 marked "Balance in Aurora Leasing Account"
April 7, 1961	—	\$1,000 marked "Balance Aurora Leasing Corporation Limited Trust Fund"
September 18, 1961	—	\$420 marked "In settlement of Aurora Leasing Corporation Limited."

The \$82.76 has already been identified and the payment made on April 7, 1961 of \$1,000 will be referred to; that made on September 18, 1961 of \$420 was a repayment by Solomon & Samuel of an overpayment of fees, but the payment made on December 16 and the two substantial payments on December 30, amounting in aggregate to \$96,974.21, require a lengthy explanation of how that sum got into the solicitors' trust account in the first place.

Before proceeding with this aspect of the matter a word should be said about remaining obligations of Aurora and C. P. Morgan under the purchase agreement of September 30, 1960 concluded with Meckler

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and Lazar. Three trifling accounts in the amounts of \$300 to Corporate Plan Leasing Limited, \$712 to Jacroy Canada Limited and \$375 to Lease Plan International were repaid by Aurora itself and not by Solomon & Samuel. An amount of \$7,163.17, entered in the schedule of shareholders' loans to be paid under that agreement and described as accrued interest, was not recorded by Aurora as a liability or as a payment and does not appear to have been paid by any one. There remains the indebtedness to Meckler and Lazar of \$44,000 which, as has been seen, Solomon & Samuel did not pay, and in connection with which, according to the agreement, these creditors were to get a promissory note due January 18, 1961. The note is made by C. P. Morgan in their favour with interest payable at 6%. One day before the note became due a cheque was drawn on the Trio account, payable to the Guaranty Trust Company of Canada in the amount of \$40,540.65,⁶ and the balance of \$4,000 due was secured by a new note from Morgan due April 18⁷ which was not paid when due. A further note for ninety days was given by Morgan and the balance was eventually paid in the amount of \$4,180.80 on July 10, 1961⁸ to the Central National Bank of Cleveland, where Meckler and Lazar did their business, and is identified by a pencilled notation in the Trio account passbook.

W. G. Blacklock and Valley Music Company Limited

The first transaction in which Aurora Leasing Corporation was used by Morgan, Walton and Wagman concerned Valley Music Company Limited which owned and installed in suitable premises in eastern Ontario coin-operated automatic phonographs and amusement machines. This was an enterprise of William George Blacklock, a native of Frontenac County, who lived in Cornwall, Ontario, and who was a drover, like his father, and an automobile dealer. Blacklock, a volatile and voluble witness before the Commission, was by the end of 1960 heavily indebted to Atlantic Acceptance among others in more than one capacity. Blacklock's performance as a witness,¹ discursive, irrelevant and, when pressed on simple yet unpalatable points, alternately excitable and obstinate, clearly indicated what he must have been like as a business associate. He apparently became a customer of Atlantic in 1956, principally in connection with the Valley Music Company. By the end of 1958 the indebtedness of this enterprise to Atlantic amounted to something in the order of \$148,000 and it was clear to Morgan that it was not a good account. In 1959 no payments in reduction of this amount were forthcoming from Valley Music and Atlantic resorted to the device

⁶Exhibit 921.

⁷Exhibit 944.

⁸Exhibit 802.

¹Evidence Volumes 13-4.

of setting up an account called Blacklock Leasing in its own books through which additional payments were made on Valley Music's behalf. In October 1959 Atlantic shuffled off the inconvenient indebtedness of Valley Music on the newly-created Commodore Sales Acceptance by selling the account to the latter for \$120,000, for which it received a note receivable amounting to \$154,440 offset by a reserve for unearned interest of \$34,440. As at December 1, 1960 Commodore Sales Acceptance treated this asset as a note receivable of \$127,000, less a reserve for unearned interest of \$22,560, leaving a net amount owing of \$104,440. It was a measure of the delinquency of the account and of the difficulties of Blacklock that, hard on the heels of the acquisition of Aurora, a resolute effort was made to ameliorate them, and at the same time remove them from the discernible neighbourhood of Atlantic by arranging for a second transfer of the liability.

By an agreement dated November 23, 1960 between Valley Music Company, for which George Blacklock signed as president, and Aurora Leasing Corporation, for which it was executed by Carl M. Solomon as president and Harry Wagman as secretary-treasurer, Valley Music sold to Aurora a quantity of "automatic coin-operated amusement machines" for \$300,000 to be paid by \$3,000 in cash, the assumption and payment of Valley Music's debts and a covenant to execute a lease, on December 1, 1960, by Aurora of the chattels sold back to Valley Music for a monthly rental of \$4,000² for ten years. The balance of the consideration was met by Aurora giving Valley Music convertible promissory notes in the amount of \$90,000, bearing interest at 7% per annum and maturing on December 31, 1965, no provision being made for any repayment of principal until that date. As a financial transaction the result was no bargain for Aurora as even a cursory inspection of the financial statements of Valley Music and its predecessor company, Cornwall Music Company, over the years 1953 to 1959 makes very plain. Cornwall Music Company, a partnership of George Blacklock and one, Thibault, terminated on June 1, 1956 when Blacklock bought Thibault's interest and Valley Music was incorporated. In 1953 the business lost \$25,500 in round figures after recording depreciation of \$21,544. In 1954 the loss was \$26,250 after taking depreciation of \$21,286 on the coin-operated machines. In 1955 no depreciation was taken and the loss was \$4,209; on the same basis in 1956 the loss was \$8,290. A profit was shown for the first time in 1957 of some \$7,300 after depreciation of \$7,000, but in 1958 the company operated at a loss of almost \$31,000 without depreciation being recorded. Finally in 1959, and similarly without depreciation being taken, the company lost \$48,113.24. Looking only at the last two years, in 1958, on the assumption that the machines would be depreciable under Class 8 for income tax purposes,

²Exhibit 946.

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the loss after depreciation would have been approximately \$66,000 and in 1959, \$78,000.³ Austin concluded that the book value of the assets of Valley Music purchased by the company was at December 31, 1959 approximately \$400,000, but that had depreciation been taken year by year at the permissible rate it would have been only \$260,000. This was the record of a company which had contracted to pay a monthly rental of \$4,000 to Aurora over a period of ten years.

Walton Pays the Debts of Valley Music Company

Some degree of security might have been obtained had Aurora retained possession of the \$90,000 in notes as a pledge of Valley Music's performance, but the agreement is silent as to any restriction on their disposition. In fact, and in a manner which will be examined in more detail, the notes were transferred to Blacklock almost immediately in satisfaction of a debt of Valley Music to him, together with the \$3,000 cash payment. But meanwhile there were Valley Music's debts to be paid and these, according to the agreement,¹ consisted of \$64,000 payable with interest at 13% to Traders Finance Corporation Limited and secured by chattel mortgage, \$14,000 to Laniel Amusements Inc. with interest at the same rate and \$129,000 expressed as being due to Atlantic Acceptance Corporation Limited with interest accruing at 9% per annum. For the purpose of discharging these, as might have been predicted, Aurora obtained a cheque for \$207,000 from Commodore Sales Acceptance² payable to W. L. Walton in trust and Walton deposited the money in his firm's trust account, being No. 9771 of the Guaranty Trust Company, on December 19. Walton paid Commodore Sales Acceptance, an actual creditor of Valley Music, the sum of \$104,433.63 which is the difference between a note receivable balance, shown as at December 19 as \$126,600, and a reserve for unearned interest of \$33,166.37, the latter having inexplicably risen nearly \$11,000 since December 1, and this closes the account. Traders Finance gave a full release to Valley Music upon payment by Walton of \$52,110. The Laniel account was similarly settled in a profitable manner but by a more circuitous route. Walton paid \$10,500 from his trust account into that of Solomon & Samuel and that firm in turn paid the creditor, securing a release³ and charging Aurora, not Valley Music, \$751.30 for settling the Traders and Laniel accounts.

Thereafter, and as a result, Walton had in hand \$39,956.37 for which he did not account to Aurora. What transpired is revealed by the Walton, Wagman & Co. trust account and by a working paper among

¹Exhibit 947.

²Exhibit 946.

³Exhibits 949-50.

⁴Exhibit 956.

those documents seized by the Department of National Revenue. The working paper⁴ shows the following notations in handwriting acknowledged to be Walton's: "Comm gives me 207,000. I pay out Trad. 52 Lan 12 and Comm 105". A balance of \$38,000 is then entered and opposite it is the note, "I pay out direct 25,000", under which is a balancing figure of \$13,000 opposite a further note: "I keep". A copy of a letter⁵ from Valley Music, signed by George Blacklock and addressed to Walton, of December 15, 1960, authorizes the following disbursements: \$3,000 to Atlantic Acceptance Corporation Limited, Kingston, Ontario; \$17,400 to Atlantic Acceptance Corporation Limited, Oakville, Ontario; \$575 to G. A. Welch & Co., Cornwall; \$4,000 to Aurora Leasing Corporation Limited, Toronto; and \$25 to William L. Walton, "trustee". All these amounts, which total \$25,000, are shown as payments from the Walton, Wagman & Co. trust account.⁶

Two of C. P. Morgan's rare letters should here be quoted. The first one is to Davidson at the Atlantic head office at Oakville and it is dated December 16, 1960.⁷

"I enclose cheque for \$17,400.00 re the Blacklock account.

It is suggested that the mortgage account on 2nd & Brookdale be credited with \$10,000. and the general account the balance.

The enclosed cheques to Commodore re Valley are to be cancelled as Aurora has taken over Valley.

As additional security to our leasing loan to Blacklock the enclosed interim certificate is to be held by us.

You will be advised when the definitive certificates are available. Interest at the rate of 7% will be forwarded to Atlantic for Blacklock as of December 31, 1960 and quarterly thereafter.

Valley will continue to deposit all receipts and transfer to Oakville.

The only payment we will be making as of January 31, 1961 and monthly thereafter will be \$4,000 to Aurora Leasing.

Valley has paid direct the December amount of \$4,000.00."

The second is dated the same day and is addressed to George Blacklock at Valley Music in Cornwall.⁸

"Enclosed is the cheque for George A. Welch & Co., re Valley Music audit.

I have disbursed the funds as per the attached direction. Please sign one copy and return to Herb. for Mr. Walton.

The taxes and interest figures will have to be paid from Oakville."

The direction signed by Blacklock was accordingly made up in advance, presumably by Walton. "Herb" is Herbert Spanton, a retired

⁴Exhibit 867.

⁵Exhibit 957.

⁶Exhibit 764.

⁷Exhibit 958.

⁸Exhibit 959.

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R.C.M. policeman, who at this time was working as a secretary and "trouble shooter" for Morgan. He shared an office with McFadden immediately outside Morgan's private office at 100 Adelaide Street West. The only payment not traced by Mr. Austin at this time was the \$3,000 payable to Atlantic Acceptance at Kingston which Blacklock said was connected with a wholesale sale of a new car.

Walton had then left in his firm's trust account the sum of \$14,956.37 which was paid into the Trio account on December 31, the deposit book showing a notation "W.L.W. Account 9771" and a pass-book showing a similar amount received. Among the Department of National Revenue seizures is a memorandum in Harry Wagman's hand headed "account of 3". This, as its opening entry dated December 31, 1960, shows "V. Music, Traders, etc" and a deposit opposite in the amount of \$14,956.37. Finally there is a cheque drawn by Carl M. Solomon on his firm's trust account, dated November 24, 1960 and payable to C. Powell Morgan, in the amount of ~~\$100,000~~^{*}, marked "re conditional purchase assets Valley Music Corporation",⁹ which receives a holograph acknowledgement from Morgan of the same date, and written on the notepaper of the "Executive Office", in the following terms, "received from Carl Solomon — \$10,000 (Ten Thousand) — re Valley Music Co. Ltd. — to be returned if not consummated by December 31/60—C. P. Morgan".¹⁰ No other explanation of this payment exists and no indication that it was ever returned in the Solomon & Samuel trust account or anywhere else, and one can only conclude that Aurora paid a finder's fee to C. P. Morgan of \$10,000 as a reward for effecting this important acquisition.

Sale of Mavety Film Delivery to N.G.K. Investments

A further transaction must be mentioned briefly. By agreement dated December 15, 1960 Aurora Leasing Corporation sold its wholly-owned subsidiary company, Mavety Film Delivery Limited, to N.G.K. Investments Limited for the price of \$256,125 which was the book value of the Mavety shares. Aurora took a promissory note from N.G.K. Investments for the whole of this amount yielding 8% per annum and repayable quarterly as to interest only, the principal sum being due and payable on December 31, 1965 and not before. No other security was given to Aurora by N.G.K. Investments, a private Ontario company, the name of which, as originally applied for, was M.G.K. to represent Morgan, Gregory and King, incorporated on the same day as the sale of Mavety Film Delivery. More will be heard of this company, and it may be noted here that among its original directors were Albert George

⁹Exhibit 968.

¹⁰Exhibit 969.

Woolfrey, the manager of Commodore Sales Acceptance, and Edward Lawrence Stone, Toronto solicitor, who, in company with other nominees, gave room to the permanent directors on December 15, C. Powell Morgan, Carman G. King, Reginald Palmer, Wilfrid P. Gregory and Sidney Fromer. The agreement of purchase and sale was executed by Carl M. Solomon as president of Aurora Leasing and by C. P. Morgan as president of N.G.K. Investments. Ten days previously Solomon & Samuel paid out of its trust account on behalf of Aurora the sum of \$8,000 to Chartered Management Consultants (of Canada) Limited, the cheque being marked as follows: "on direction dated December 9, 1960 of Aurora Leasing Corporation Limited for services to Mavety Film Delivery Limited". Since the Trio of Morgan, Walton and Wagman who owned Chartered Management Consultants only acquired control of Aurora on September 30 and since no services were performed by the former company on Aurora's behalf, this payment, like that of \$10,000 to C. P. Morgan in respect of the Valley Music transaction, cannot be explained or justified.

Early Financing of Aurora Leasing: The Solomon & Samuel Trust Account

It is now necessary to return to the operations within the Solomon & Samuel trust account to explain the payments made from it to W. L. Walton in trust, and assess the real cost to Morgan, Walton and Wagman of the Aurora acquisition. Aurora was a private company but members of the public, albeit some with familiar names, were invited to participate. At a meeting of the Aurora board on December 1, 1960 steps were taken to authorize the issue of notes due October 31, 1965, bearing interest at 7% and convertible at the option of the payee at any time up to December 31, 1965 into one common share of the company for each \$30 loaned to it,¹ and to increase the authorized capital to 25,000 common shares by supplementary letters patent which were forthcoming on December 8. In the meantime subscriptions had already been received for shares and notes and money deposited in the Solomon & Samuel trust account for Aurora as indicated on Table 28,² an accountant's schedule showing the share and note subscriptions handled through that account beginning on November 10. Subscriptions of \$12,000 each were received from Granite Investment & Development Limited, a public company in London, Ontario, and Reginald Palmer who was associated with it, each of which were issued \$10,000 in notes and 100 shares priced at \$20 per share. British Mortgage & Trust Company subscribed \$80,000 for \$60,000 of notes and 1,000 shares, and Ann P. Gregory

¹Exhibit 287.

²Exhibit 972.

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\$5,000 for 250 shares. On November 21 Annett Partners subscribed \$5,000 for shares only, and on December 9 Carman G. King for the same firm subscribed \$34,000 for \$20,000 of notes and 700 shares. The last two subscriptions deposited in the Solomon & Samuel trust account were from Steinhart Holdings Limited and John Lynch for \$48,080 and \$12,020 respectively, for which, in addition to Aurora shares and notes, they received 400 and 100 shares of N.G.K. Investments at 20¢ a share. Writing to Harry Wagman on November 14 David Samuel advised him of the deposit of the Granite Investment, Palmer, British Mortgage & Trust and Mrs. W. P. Gregory subscriptions and that further amounts were to be forwarded from C. G. King, concluding "we will be in touch with Mr. C. P. Morgan within the next few days for instructions as to the denomination of the shares to be issued and will advise you further after this has been done". By December 14, 1960, therefore, \$208,100 had been deposited in the Solomon & Samuel trust account and 2,900 of the original 5,000 common shares acquired on September 30 had been disposed of. The deposit slips for the trust account do not identify the British Mortgage & Trust subscriptions which are none the less recorded in Samuel's letter to Wagman. Samuel also prepared a memorandum for his partner Solomon, dated December 8,³ which is in part as follows and provides information as to the valuation of the shares as well as throwing light upon their distribution:

"Re: Aurora Leasing Corporation Ltd.

In so far as the purchase of the shares is concerned and the minutes pertaining thereto, I would appreciate if you would go over the minutes prepared by Dan Lang as you will note that he has transferred all of the shares to C. P. Morgan, and they should have been transferred into your name and the names of Harry Wagman, Bill Walton and myself. Subsequent minutes and the bank resolution (of which we do not have a copy in the file) show you as President, Harry as Secretary-Treasurer, and myself and Bill as Directors.

All of the debts have been paid off other than the debt owing to Lavan Trust Company and the account owing to Smith, Rosenberg, etc. We probably should have made a search of Conditional Sales and Chattel Mortgages registered against the equipment that was purchased along with the shares.

We possess all of the issued shares of this Company other than the one that was issued to Morton Greenspoon, and we may yet get that from our friend Mr. Lo Bruto as I have prepared a transfer for execution by Greenspoon and have asked Lo Bruto to get it signed as part of the requirements for the discharge of the debt to Lavan.

Here again we have drawn new minutes which will have to be signed off by the new directorate. In the immediate meeting after the

³Exhibit 974.

new directorate acquires the shares, there should be a resolution as to the sale of equipment to Corporate Leasing and that agreement should be made an exhibit to those minutes.

We require share certificate books for both Aurora and Mavety.

After the supplementary letters patent have been obtained the following convertible notes and common shares are to be issued.

<u>Name</u>	<u>Convertible Notes</u>	<u>Number of Shares</u>
Reg Palmer	\$10,000.00	_____
Elizabeth E. Palmer	_____	25 common shares
Katherine E. Littlejohn	_____	25 common shares
Jane Anne Palmer	_____	25 common shares
James A. Palmer	_____	25 common shares
Granite Investments & Develop- ment Limited	\$10,000.00	100 common shares
British Mortgage & Trust Com- pany	\$60,000.00	1,000 common shares
Carman G. King	\$ 6,000.00	150 common shares
	\$ 6,000.00	200 common shares
	\$ 8,000.00	350 common shares
Ann P. Gregory	_____	250 common shares
Annett Partners Ltd.	_____	250 common shares

The original intention was to sell stock in \$12,000.00 units, made up of 1—\$10,000.00 note and 100 n.p.v. common shares for \$20.00 each. You will note that the units being purchased by British Mortgage & Trust Company do not correspond to that formula nor do the purchases of Ann P. Gregory and Annett Partners Limited. Would you kindly confirm the instructions we received in this regard, with Harry Wagman.

And that for the time being appears to be that.”

There are no payments from the Solomon & Samuel trust account at or about December 14 related directly to money received for shares, but, on December 16, Carl Solomon drew a cheque on it⁴ repaying to Aurora the \$50,000 received on October 16 from Corporate Plan Leasing and used by him to purchase the shares belonging to Meckler and Lazar on behalf of Morgan. The amount deposited for the purchase of shares by December 12 totalled \$58,000. The additional \$8,000 coincides with the payment to Chartered Management Consultants which has been noticed above. The conclusion that Solomon & Samuel were short in their trust account in the sum of \$50,000 which should have been held for Aurora during this two month period is inescapable. Here

⁴Exhibit 975.

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is what Carl Solomon had to say on the subject when he testified before the Commission on March 15, 1966:⁵

“Q. So the position, I take it, is that you received the \$50,000.00 from Corporate Plan Leasing, and you hold that for the benefit of Aurora. Would that be correct?

A. Yes, sir.

Q. And you pay that sum of money out for the benefit of Mr. Morgan as purchaser for Messrs. Meckler and Lazar. Is that correct?

A. Yes, sir.

Q. On whose instructions did you do that, Mr. Solomon?

A. On the instructions of Mr. Morgan, Mr. Shepherd.

Q. Why did you conceive that Mr. Morgan was entitled to give you instructions to pay monies, the property of Aurora, out of your account, for his benefit?

A. Because he effectively controlled Aurora Leasing Corporation Limited, Mr. Shepherd.

Q. Would you agree that he was not an officer or director of the company?

A. That is correct, sir.

Q. You were the President of the company. Is that correct?

A. That is correct, sir, yes sir.

Q. He was not a registered shareholder of the company?

A. That is also correct, sir.

Q. But I take it that the shares which you held, you held for Mr. Morgan?

A. Yes, sir.

Q. Is there any other reason why you considered Mr. Morgan to be entitled to give instructions on behalf of Aurora?

A. In effect, I think that Mr. Morgan was manager of Aurora. He was running the affairs of Aurora. As far as I knew, everyone was looking to Mr. Morgan for information of Aurora.

Q. You say then that your position is whatever may have been Mr. Morgan's relationship to Aurora, in law, you conceive that de facto he was the person in charge of the conduct of its affairs?

A. That is a fair statement, sir.

Q. I am proposing to leave this point now, Mr. Solomon, unless there is anything more on the issue of the receipt of the money for the benefit of

⁵Evidence Volume 10, pp. 1229-33.

Aurora, and the payment of that money out for the benefit of Mr. Morgan that you would wish to say, or anything that I have overlooked?

A. I have nothing further to say, Mr. Shepherd.

Q. Then according to the records of your firm, Exhibit 692, you repaid \$50,000.00 to Aurora on the 16th of December. Is that not correct? Perhaps I can assist you to find the entry, Mr. Solomon, and I can locate it here. Is that correct?

A. That is correct, sir.

Q. So you restore Aurora's position on the 16th of December?

A. It would appear to be so, sir.

Q. Now what is the position between the 16th of October and the 16th of December? Who owes Aurora \$50,000.00?

A. It would appear that if \$50,000.00 was paid out by Aurora, for Mr. Morgan, then Mr. Morgan would owe Aurora \$50,000.00.

Q. But is the position not that \$50,000.00 is paid out by you for the benefit of Mr. Morgan on the 16th or 17th October?

A. That is correct.

Q. Then where is the money between the 16th or 17th of October and the 16th of December. Where is Aurora's \$50,000.00?

A. I am not sure I am following your question, Mr. Shepherd.

Q. May I put it this way. Is the position not that Mr. Morgan presumably owes you \$50,000.00, as solicitor for Aurora, and you owe Aurora \$50,000.00 between the 16th of October and 16th of December?

A. No sir.

Q. What do you say the position then is?

A. Well, as I analyze the position it was I was instructed and directed to take monies deposited to the credit of Aurora's account and pay it to Mr. Morgan, at the direction of Mr. Morgan. That was the end of that transaction, and thereafter that was a washout transaction.

Q. Then is your position that Aurora ought to have recorded that Mr. Morgan owed \$50,000.00 to Aurora, and not yourself owing \$50,000.00?

A. That is correct, sir.

Q. Would you take from me that in fact it appeared in evidence yesterday, Aurora recorded that money as being owing from you?

A. I accept that as being correct, yes sir.

Q. Your position is simply that that is not so, because Mr. Morgan gave you contrary instructions?

A. Emphatically."

If allowances are to be made for Solomon's inexperience and for the difficulty encountered by a young lawyer laying down the law on the

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use of trust funds to this captain of industry, it is impossible to justify the position taken by him when he was five years older and presumably wiser.

Distribution through the Trio Account

The next distribution of shares and notes took place through the Trio account and is illustrated by Table 29.¹ The terminal date of May 10, 1961 has been selected because a handwritten list of Aurora shareholders as of that date was found in the back of one of the company's share certificate books.² All of the amounts went directly into the Trio account except for the subscription of L. W. Spencer which reached it through the Solomon & Samuel trust account as indicated in Note 1. Notes in the amount of \$60,000 and 600 shares issued for \$12,000 were issued between December 31, 1960 and April 25, 1961, and an odd amount of \$192.84, attributed to accrued interest and some additional shares of N.G.K. Investments, makes the total deposited in the Trio account during the period \$72,192.84. Thus, at May 10, Walton, Wagman and Solomon, the last for Morgan, held 1,500 of the issued shares which on the handwritten list they are shown as holding jointly,³ and, although registered at the time in the proportions of 700 to Walton, 700 to Wagman and 100 to Solomon, were ultimately, by the end of the following year, registered in the proportions of 500 each, authorized by a minute of the board of directors dated September 27, 1961. Further confirmation of the beneficial position of C. P. Morgan is to be found in a typewritten document⁴ one copy of which was seized by the special investigators of the Department of National Revenue in Wagman's office and another in Walton's house. It is dated August 31, 1962 and it is reproduced as Table 30, but it will be noted that it is headed "C. P. Morgan, Wm. L. Walton and H. Wagman, Statement of Investments as at August 31, 1962" and shows 1,500 shares of Aurora Leasing Corporation Limited in the list of shares held in public companies and to which a price of \$10 per share is attributed. Aurora did not in fact become a public company until December 17, 1962 when, by supplementary letters patent issued by the Secretary of State of Canada,⁵ the original letters patent were amended to this effect, at the same time converting the 450 preference shares originally authorized to 975,000 common shares to be added to the 25,000 authorized common shares, with the proviso that the aggregate of the common shares should not be issued for a total of more than \$1,000,000. To summarize the shareholding position within Aurora Leasing, a list of the principal share-

¹Exhibit 976.

²Exhibit 605.

³Exhibit 977.

⁴Exhibit 863.

⁵Exhibit 370.

holders as at May 10, 1961 and April 14, 1965 shows the following comparison:⁶

	<i>May 10, 1961</i>	<i>April 14, 1965</i>
British Mortgage & Trust Company	1,000	22,500
W. P. Gregory	500	21,267
Carman G. King	700	10,814
Steinhart Holdings Limited	400	7,600
C. M. Solomon	100	6,800
William L. Walton	700	7,000
H. Wagman	700	7,000
Clarence M. Fines	—	11,366
McConnell Securities	—	4,000
Others	900	25,320
	<u>5,000</u>	<u>123,667</u>

The increase is explained by the fact that 23,667 shares were issued on conversion of some of the convertible notes prior to April 14, 1965 and that on May 9, 1963 the shares were split 10-for-1 and an additional 50,000 shares issued. The shareholders described as “others” held small amounts and were some thirty in number. It will be seen that British Mortgage & Trust Company is the largest shareholder at both dates and that by April 14, 1965 W. P. Gregory personally held almost as many as his own company. Clarence M. Fines, a former Provincial Treasurer of the Province of Saskatchewan, and Carman G. King have a substantial investment, and the holdings of the Trio have proportionately declined.

The Aurora Notes

The authorization of the issue of convertible notes by the directors of Aurora on December 1, 1960 has already been referred to and, as indicated above, and in accordance with the financial statement of December 31, 1960, a first issue of \$300,000 had been made by the end of that year. Of these, as has been seen, \$150,000 worth were issued through the Solomon and Samuel trust account, and \$90,000 worth to Valley Music Company Limited, leaving \$60,000 worth issued to others. Of the \$150,000 received by Solomon & Samuel in trust they were committed to pay on Aurora’s behalf a total of \$150,562.43. They did pay in respect of shareholders loans \$111,131, including \$11,000 of the \$25,000 deposited with them by Morgan and from the Trio account, the deduction of which would leave a balance of \$100,131 paid by them on Aurora’s behalf. Thereafter they paid the Smith, Winston & Co. fee of \$4,211.13, interest on the loan from Commodore Sales Acceptance of

⁶Exhibit 978.

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\$983 and Lang, Michener & Co.'s bill of \$1,237.30, and they were committed to pay, although they did not do so, a Meckler and Lazar debt of \$44,000. The sum of these amounts is \$150,562.43. In connection with the payment to Meckler and Lazar, made from the Trio account, it will be recalled that by December 30, 1960 Solomon had paid from his trust account to the Trio account somewhat over \$97,000.

The remaining \$60,000 of notes not hitherto accounted for on the first issue were paid for by a cheque dated December 30, 1960 in the amount of \$48,437.57, drawn on the Trio account in favour of Aurora Leasing Corporation.¹ This cheque is also referred to in the handwritten document called "Account of 3" mentioned above,² with the notation "Aurora Leasing, re \$300,000 note". If the amount of this cheque is added to the \$11,000 held in the Solomon & Samuel trust account as part of the Trio's \$25,000 and transferred to the general account for payments on behalf of Aurora, the total is \$59,437.57. By adding this to the \$150,562.43 paid out by Solomon & Samuel the total is exactly \$210,000, which accounts for all the notes of the first issue other than the \$90,000 of notes going to Valley Music Company. One of the payments made by Solomon & Samuel to William L. Walton in trust, that of \$24,040 by L. W. Spencer for which he received \$20,000 of Aurora notes and shares of Aurora and N.G.K. Investments, has already been remarked and had the effect of reducing the noteholdings of Morgan, Walton and Wagman from \$60,000 to \$40,000, so that by the end of the year 1960 the apparent position was that members of the public had \$170,000 of notes, Valley Music Company \$90,000 and the Trio \$40,000.

The Trio and Valley Music Company's Aurora Notes

Although this is clearly the effect of the issues of notes and the payments in respect of them, there is evidence to show that Morgan, Walton and Wagman treated \$50,000 worth of the Valley Music notes as their own. This consists of a handwritten memorandum among the seizures made from Wagman's office¹ as to interest payable on January 3, 1961, and shows opposite the word "Trio" the figure "40,000" as one might expect. Opposite an entry for Valley Music Company Limited is "90,000" which is broken down into "50,000" and "40,000", with "326.02" opposite the 50,000 and "260.82" opposite the 40,000, these figures being then added together and divided in three, giving amounts of \$195.61, \$195.62 and \$195.61 which are the same as those paid to Walton, Wagman and Morgan at the January 3 interest date. The payments are made by cheques² drawn by Aurora in favour of the three

¹Exhibit 804.

²Exhibit 868.

³Exhibit 874.

⁴Exhibit 871.

individuals, with the exception of that to Walton which is made payable to the order of A.J.C. Investments Limited, a company which Walton denied on oath knowing anything about. Further corroboration of this treatment by the Trio of \$50,000 worth of the Valley Music notes as their own is provided by the note register books of Aurora which record that \$30,000 of notes are issued to each of them, and since it has been established that they must only have had \$40,000 worth at this point the additional \$50,000 must of necessity be those of Valley Music.

Again reference must be made to the activities of the Trio account in the Guaranty Trust Company to discover how this \$90,000 of notes was disposed of. The record of sales of shares and notes handled through this account on December 14, 1960 to May 10, 1961 in Table 29 shows, in addition to the sale of a \$20,000 note to L. W. Spencer, eight sales to other members of the public of notes to the value of \$5,000 each made between March 13 and April 25, 1961. These dispose of the \$40,000 worth of notes legitimately held by the Trio after the sale to Spencer at the end of 1960. Since the Trio were treating \$50,000 of the Valley Music notes as their own, the balance of \$40,000 of notes provided to Valley Music by the agreement with Aurora must be located, and it is found that a note in this amount was issued to Atlantic Acceptance, and interest in the amount of \$260.82 paid thereon at January 3, 1961 by a cheque particulars of which read "re George Blacklock". Thus is explained that paragraph in Morgan's letter to Davidson of December 16, 1960 quoted above and beginning: "As additional security to our leasing loan to Blacklock the enclosed interim certificate is to be held by us".

Looking again at the share and note subscriptions handled through the Trio account between May 10 and June 16, 1961 shown on Table 31,³ there is to be seen a total of \$90,000 worth sold to W. H. Wallace in respect of \$15,000, R. Roch of \$5,000, Dr. Keith Burwell of \$15,000, and J. J. Richardson for Dorothy Richardson of \$15,000, with various subscriptions made through Aurora in the amount of \$40,000, for which the sum deposited in the Trio account was \$86,407.27, the difference being attributable to accrued interest and discount. An example of these transactions is provided by a letter from Vancouver dated May 25, 1961, addressed to Mr. C. Powell Morgan and signed W. Keith Burwell, M.D.,⁴ and the paragraph quoted below is not only interesting as such but indicates somewhat more knowledge of what was going on by W. H. Wallace, a director of Atlantic, than he was prepared to admit to the Commission:

"You will recall a telephone conversation with my friend, Bill Wallace, last Friday afternoon at which time he said I was in his office and was interested in taking a position with the AURORA LEASING CO. LTD.;

³Exhibit 979.

⁴Exhibit 980.

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which was to be to the amount of \$15,000 par, at 95 of the 7% convertible notes of this company. The letter of application was to be addressed to you, and the cheque made payable to W. L. Walton (In Trust). My personal cheque, #35, is enclosed to the amount of \$14,250, and obviously they are for me personally rather than my Van-Bur Company. Naturally I hope we will have as satisfactory a performance as we had with COMMODORE SALES”.

It will be recalled that only ten days previously the final acquisition of the interest of the minority shareholders in Commodore Sales Acceptance had been completed.

The situation now produced is one which requires close analysis. The holdings of the Trio of Morgan, Walton and Wagman had been reduced by the subscriptions for notes filled between December 14, 1960 and May 10, 1961 to \$40,000.⁵ The subscriptions of W. H. Wallace, R. Roch, Dr. Burwell and Dorothy Richardson accounted for another \$50,000 at face value for which the Trio account had received that much, less \$1,592.73 in respect of accrued interest and discount. There remains the item entitled “Various Subscriptions made through Aurora” in respect of which on May 29, 1961 \$38,000 was deposited in the Trio account, attributable to notes to the value of \$40,000. All the other notes having been accounted for at this point, the subscriptions could only have been filled by having available the \$40,000 worth issued to Atlantic Acceptance, and indeed on May 29 a certificate in respect of this amount was back in the hands of Aurora in cancelled form, the notation on it being “replaced by certificate No. 59 May 26, certificate No. 60 June 1 and certificate No. 61 June 16”. Certificate No. 60 was in fact issued to Dr. Burwell in the amount of \$15,000 and certificate No. 61 for the same amount to Dorothy Richardson. Certificate No. 59 was issued to Granite Investment in the principal amount of \$10,000 for which the purchaser paid Aurora Leasing the sum of \$9,500 by cheque, dated May 25 and signed by R. A. Palmer.⁶ The cheque is endorsed by Aurora for deposit to its own account.

On May 26, 1961 Aurora made its second issue of notes, apparently in the principal amount of \$340,000, but after the issue was complete the total notes outstanding amounted to \$600,000 and not \$640,000, as interest payments made by the company in September 1961 confirm and do not provide for any payments being made to Morgan, Walton or Wagman or to Atlantic Acceptance who are not then recorded as noteholders. The issue is illustrated on Table 32⁷ where it will be noted that the \$9,500 subscription made by Granite Investments is included in respect of a note with a par value of \$10,000. Only some of the

⁵Table 29.

⁶Exhibit 982.

⁷Exhibit 983.

subscribers get their notes at a discount, viz., Dorothy Martin, British Mortgage & Trust Company, A. T. Christie, Granite Investments and Annett Partners. The paid subscriptions amounted in all to \$333,750 in respect of \$340,000 worth of notes, and the only possible explanation is that the new noteholders received \$10,000 worth of the Atlantic note for \$40,000 with \$30,000 from the holdings of Morgan, Walton and Wagman, thus including in the second issue \$40,000 worth of notes already outstanding. Based on a sale of \$300,000 of notes with the appropriate discount of \$4,250, Aurora should only have had on its books subscriptions in the amount of \$295,750, so the excess amount was paid to W. L. Walton and deposited in the Trio account on May 26. Evidence of the intention to dispose of the note heretofore held by Atlantic is contained in a release signed by George Blacklock, dated June 12, in the following terms:⁸

“This is authorization for Atlantic Acceptance Corporation Limited to release to W. L. Walton \$40,000.00 principal amount of Aurora Leasing Limited Debentures held by them. It is understood that the proceeds of these debentures, \$38,000.00 will be administered by Mr. Walton as trustee for and on behalf of myself.”

On July 19 this \$38,000 is paid out by a cheque drawn on the Trio account⁹ in favour of Valley Farm and Enterprises Limited, a company, like Valley Music, associated with the affairs of George Blacklock and owned by the Trio, about which more will be heard. Of this Atlantic, which had lost its \$40,000 security, received back approximately \$17,000 on account of Blacklock's indebtedness, and the balance was paid to Blacklock or for his benefit.

The Trio's Profit

A summary of the cash receipts and disbursements of Walton, Wagman and Morgan in connection with the acquisition of Aurora Leasing Corporation, recorded in the Solomon & Samuel trust account and the Trio account No. 13324 in the Guaranty Trust Company, prepared by Mr. Austin, appears as Table 33.¹ It shows the cash received and disbursed by the Trio account and an excess of receipts over disbursements of \$97,272.65. This excess is analysed following the listing of receipts and disbursements and it will be noted that, since the payment to Lavan Trust transpired only in 1964, according to the evidence of Carl Solomon, in the amount of \$15,000, and on the assumption that this was Trio money, a deduction should be made in that amount leaving a balance of \$82,272.65. The payment of \$8,000 by

⁸Exhibit 984.

⁹Exhibit 985.

¹Exhibit 986.

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Solomon & Samuel on behalf of Aurora to Chartered Management Consultants has not been included but, since that company was owned by Morgan, Walton and Wagman, it should be credited to the excess, leaving a balance of \$90,272.65.

In addition to this large amount of money which went into the pockets of Morgan, Walton and Wagman, these three men had acquired 30% of the issued capital stock of Aurora, as at May 10, 1961, without cost to themselves. Moreover Valley Music Company never paid its debt to Aurora. In 1963 the latter sold the coin-operated equipment purchased from Valley Music to a company called Ottawa Valley Amusements Limited, an enterprise of George Blacklock's brother Neil, for \$105,000. If Aurora had recorded the allowable depreciation on the valuation of \$300,000 made in relation to these assets at the time of the purchase from Valley Music, they would have had a book value of approximately \$155,000, and Aurora's loss would have accordingly been some \$50,000 on this transaction. At the time of Aurora's bankruptcy on July 30, 1965 the debt of Ottawa Valley Amusements amounted to \$118,344, an additional amount being attributable to accrued interest.

Evidence of W. L. Walton

The bewildering detail of this account of the acquisition of Aurora Leasing Corporation must not be allowed to obscure the enormity of the whole transaction. Misfeasance, malfeasance and breach of trust on the part of C. P. Morgan, W. L. Walton, Harry Wagman and Carl M. Solomon are everywhere evident. Walton's evidence, when it emerges from behind the shield of a lost memory, is of little assistance. He recalled having an interest in Aurora and being a director of the company. He identified the documents put to him which were in his own handwriting and those to which his signature had been appended, including entries in the Trio account passbook which he had made, but he maintained that he could not remember why these things had been done. He disclaimed any knowledge of the transaction between Aurora and Corporate Plan Leasing or of that between Aurora and Valley Music, but readily agreed that things must have been done by him when documentary evidence of his performance in the matter was presented to him. So that the difficulties of counsel may be appreciated some excerpts from Walton's evidence can be usefully quoted:¹

"Q. Do you recall having any discussion with Mr. Morgan or with Mr. Wagman about Aurora purchasing the assets of Valley Music Company Limited?

A. No, I don't recall any discussion.

¹Evidence Volume 81, pp. 10880-1.

Q. Just to sum up before we start into it, as I understand it, you do not recall the company, Aurora, entering into an agreement to purchase assets of Valley Music, you do not recall any such transaction in fact taking place, and you do not recall personally being involved in the completion of any such transaction or of having had any conversation with Mr. Morgan or Mr. Wagman relating thereto; is that correct?

A. That is correct.

Q. Did you have any conversations, according to your memory, with anybody at all relating to the purchase of Valley Music by Aurora?

A. No, sir.

Q. And I take it your mind is a complete blank on the subject of the purchase of assets of Valley Music by Aurora; is that correct?

A. That is correct, sir.

MR. SHEPHERD: In the light of this, Mr. Commissioner, I will require a substantial number of exhibits."

Then after a brief adjournment, the examination resumed:²

"MR. SHEPHERD: I had already shown you, Mr. Walton, the minutes of Aurora in which there is a reference to an intended purchase of Valley Music assets by Aurora, of which latter company you were a director. I now show you Exhibit 946, which is dated the 23rd of November, 1960, made between Valley Music Company Limited and Aurora Leasing Corporation Limited, signed on behalf of Aurora by Mr. Wagman and Mr. Solomon and signed on behalf of Valley Music Company by Mr. Blacklock, which provides, in part, that Valley Music Company Limited is indebted to Traders Finance Corporation Limited in the amount of \$64,000, to Laniel Amusements Inc. in the amount of \$14,000, and Atlantic Acceptance Corporation Limited in the amount of \$129,000.

A. Yes.

Q. I think you have already told me, but I will ask you again: were you then familiar with the fact that this transaction was being entered into?

A. No, I wasn't familiar with it at the time.

Q. When did you first become aware that such a transaction was being entered into?

A. I believe when Mr. Morgan sent over a cheque to the office to pay off some of the debts that were assumed.

Q. I understood you to say just before lunch, Mr. Walton, that you had not had any conversation with anybody at all about an intended purchase or a purchase which had happened of these assets. Did you not say that?

A. Well, I didn't see this document and so on.

²Evidence Volume 81, pp. 10885-7.

THREE ACQUISITIONS

Q. I see. With the assistance of the document, then, you now recall that such a transaction did take place?

A. Oh, yes.

Q. Yes.

A. After it took place I knew."

The use of his trust account was then put to the witness and the payments from it of the debts of Valley Music specifically referred to. The only variation of the stock answer that he could not recall why things were done came when it was pointed out to him that moneys had been retained in his trust account for which he was accountable to Aurora; whereupon he answered that this was done at the direction of C. P. Morgan. A final example of Walton's general thesis was as follows:³

"Q. After you had paid those debts in full and releases for them had been issued, there remained in your hands a figure of something in excess of \$39,000. Of that amount you paid out \$25,000 pursuant to the direction of Mr. Blacklock, and you took the balance and paid it into what has been referred to as the "Trio account". Does that not appear to be what occurred?

A. Yes, it does.

Q. Mr. Walton, it would appear on the surface, in default of some explanation, that that money which was paid into the Trio account was the property of Aurora Leasing Corporation Limited, and I wonder if you could assist the Commission as to how this payment came to be paid?

A. Payment made to whom?

Q. Into the Trio account. Why was it paid there rather than paid back to Aurora?

A. Well, as I mentioned earlier, it would have been on Mr. Morgan's direction, Mr. Shepherd.

Q. Mr. Morgan, Mr. Walton, was not a director or officer of Aurora Leasing, was he? Indeed, so far as the registered share records were concerned, he wasn't even a shareholder, although I will agree that shares were being held for him beneficially by Mr. Solomon.

A. Well, I always thought that Mr. Morgan was an officer and director; he ran the company. All the money that went into the company was on his direction.

Q. You were a director of the company?

A. Yes, I was a director as well.

Q. And Mr. Wagman was a director?

A. Yes.

³Evidence Volume 81, pp. 10895-7.

Q. And Mr. Solomon?

A. Yes.

Q. Did you think Mr. Morgan was a director of the company?

A. Well, perhaps Mr. Solomon may have been acting for Mr. Morgan, but I know Mr. Morgan managed the company. He directed its operation.

Q. May I take it, then, that your explanation for this payment of funds into the Trio account, 13324, is that Mr. Morgan told you to pay it into that account? Is that correct?

A. That is correct, sir.

Q. And will you please take it from me that accountants have already testified before this Commission that that sum was not repaid to Aurora at any time? Do you recall it being repaid to Aurora?

A. I couldn't recall, sir.

Q. When Mr. Morgan told you to pay this money, Mr. Walton, being the amount left over after the settlement of Aurora debts, into an account in which Mr. Morgan had an interest, did you consider that to be an honest transaction?

A. As I mentioned earlier, I didn't doubt the man at all. I never thought to question as to why he did these things.

Q. Do you consider it to have been an honest transaction now?

A. I don't know how to describe what was in Mr. Morgan's mind.

Q. I was endeavouring, really, to obtain your own view, Mr. Walton, that is, what was in your mind?

A. I don't think I can pass an opinion on that, sir.

Q. Is there any other explanation—

THE COMMISSIONER: Mr. Walton, you were then a chartered accountant and, I believe, a licensed trustee in bankruptcy, and you were professionally qualified, I think, to hold an opinion on this particular point. You say, as a chartered accountant and as a licensed trustee in bankruptcy, that at that time and now you have no opinion as to the honesty of that transaction?

A. I don't know what to say."

Finally, as to the operation of the Trio account it would appear from Walton's evidence that when he was not obeying the dictates of C. P. Morgan his hand was being guided by that of Harry Wagman.

Wagman's Evidence on the Trio Account

Wagman in his evidence¹ denied that Walton's actions in the Trio account and in connection with joint investments of himself,

¹Evidence Volume 82.

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Wagman and Morgan were done at his dictation, but maintained generally that Morgan had complete control over both of them. Morgan's first employment of account No. 13324, which had been used to handle joint investments of Walton and Wagman hitherto, had been, according to Wagman's evidence, on the occasion of the John Belli transactions in June 1960. About the origin of this he said, "to the best of my recollection, knowing Mr. Morgan and how he was doing things, this transaction between Atlantic and Belli was discussed by themselves and for some reason that I could not explain he came over to our office and asked, I think it was Mr. Walton if there was a trust account or some account that he could transact, put this thing through, and issue the cheques out of". He said further that realizing that Morgan's use of the account was going to create problems, on April 27, 1961 and not before, he closed out the account with respect to matters in which he and Walton were jointly interested by a withdrawal of \$2,580.40. As to the subsequent nature of transactions in the account Wagman should be heard *in extenso*:²

"Q. As at 27th April, 1961, you made the appropriate adjustment and withdrawal of funds so that those funds in that account, which were solely the property of Mr. Walton and yourself, were withdrawn and after that date there were no moneys in the account other than moneys in which Mr. Morgan had an interest; is that correct?

A. Yes, sir.

Q. And is it sometimes referred to by Mr. Walton in his handwritten working papers as the Trio account?

A. Yes.

Q. Who are the members of the Trio?

A. Well, I would imagine he meant Mr. Morgan, himself and myself.

Q. Mr. Morgan was never a person entitled to sign cheques on that account, was he?

A. No, sir.

Q. Why did you consider that Mr. Morgan wished to deposit funds in which he had some interest in an account which stood in the names of others and over which he had no signing authority?

A. Why?

Q. Yes.

A. Outside of trust, there is no other reason. It was never discussed and it was never asked that he sign cheques. We would have been glad to give him the opportunity to do so.

Q. Were you concerned about the surreptitious nature of this course of dealing?

A. No.

²Evidence Volume 82, pp. 11013-9.

Q. Did it awaken in your mind any sense of uneasiness about Mr. Morgan's honesty?

A. No, sir.

Q. At any time did you have any sense of uneasiness about Mr. Morgan's honesty?

A. No, sir.

Q. Were there any documents in existence whereby you and Mr. Walton or either of you declared that Mr. Morgan was entitled to a share in the proceeds of this account?

A. No, sir.

Q. It was all done orally?

A. Yes, sir.

Q. Was the share in the Trio account, after April 1961, one-third each?

A. No, sir.

Q. I'm sorry, I didn't hear you.

A. No, sir.

Q. What was the share?

A. There was no designated share at any time saying that each one of us had a third. It was never discussed. Whatever Mr. Morgan wanted to do with the funds in that account would have been done.

Q. I suppose it would be fair to observe that, as a matter of law, whatever you or Mr. Walton wished to do with the account would have been done because you were the only persons who could sign a cheque; is that not correct?

A. Yes. We could have done that, yes.

Q. Would you be good enough to expand further upon the degree to which Mr. Morgan had control over an account which was not in his name and on which he could not sign a cheque?

A. Well, he knew I would not sign a cheque without his direction or at his direction and it was a case of utmost trust and I never did sign a cheque without his knowledge or without his direction and he was satisfied to go along with that. He could have signed the account all by himself if he wanted to.

Q. I'm sorry. He could have?

A. If he wanted to take over the sole signing of this account he could have had it, too.

Q. He could have had it in the sense that had he asked you to write a cheque for the whole sum and pay it to him you would have done so; is that correct?

A. Absolutely.

THREE ACQUISITIONS

Q. Did you and Mr. Walton have any interest in the funds in that account?

A. Only what Mr. Morgan gave to us.

Q. Did Mr. Morgan indicate to you what it was that he was going to give to you or authorize to take?

A. No, he never, in advance or anything. He just said, 'Do this today' and that was all.

Q. Then is it your position that the funds in that account stood, as a matter of law, under the control of yourself and Mr. Walton but, as a matter of unspoken arrangement between the three of you, they were really at Mr. Morgan's disposal?

A. Yes, sir.

Q. Did you expect any part of the balance in that account?

A. No, sir, never.

Q. Did Mr. Walton expect, as far as you are able to determine from your conversations with him, to receive any part of those moneys?

A. No, I don't think Mr. Walton expected anything more than I did.

Q. Then really you are saying this is Mr. Morgan's account, aren't you?

A. That's right.

Q. If you are saying it is Mr. Morgan's account, why do both you and Mr. Walton always refer to it as the Trio account or account of three?

MR. MacKINNON: With respect, Mr. Commissioner, I don't believe this witness called it the Trio account.

MR. SHEPHERD: Let me rephrase it, Mr. Commissioner. I think Mr. MacKinnon is quite correct. Why did Mr. Walton refer to it as the Trio account and you refer to the account as the account of three in your working papers?

A. Well, I don't know why Mr. Walton referred to it as a Trio and there was no reason for me to just put down the account of three. I had to name it something. I was calling it 13324 and I don't know just how this came about, the account of three or Trio, but it actually had no meaning, and there was no reason why that was attached to it.

Q. It was a singular thing to do, was it not, to ascribe the name 'Account of three' to an account which on its face was an account of two but, as you assert, was really an account of one, Mr. Morgan's?

A. Well, by him having control of this account, it was at his disposal.

Q. Well, Mr. Wagman, have you had an opportunity now to make full explanation of the existence of this account—and we will be dealing with particular deposits and withdrawals—the existence of this account in your name and Mr. Walton's name and Mr. Morgan's association with it? Is there anything else you wish to add on the point?

A. No, nothing too much more to add. But looking through some of these entries in here, there was cheques that were issued to companies that I had no knowledge of and it says 'C.P.M. re M.L.M.' which is Mildred Morgan for \$10,000. He told me to issue it out of there. We issued it out of there. And West World, I don't know what these were. He told me or Mr. Walton to issue and we issued them. It indicates the control he had. We didn't say, 'We don't want to do it' or any reason for it.

Q. When Mr. Morgan wished to take some part of the funds out of the account for his personal benefit you readily acceded to that request?

A. Yes.

Q. Do you assert that the fact that Mr. Morgan was permitted to withdraw for his personal account and benefit sums in the order of \$10,000 and the like shows that the whole of the account was Mr. Morgan's instead of just a third of it?

A. Well, it could have been. If he wanted everything to go to him, it would have gone to him.

Q. Mr. Wagman, with all respect, in that sense it could have been the property of the Community Chest in that you could have written a cheque to them, I suppose, if you wanted but the control of it was yours?

A. That's right."

The account was closed out on December 2, 1963, as a result of the interest shown in the affairs of W. L. Walton by the Department of National Revenue out of which, as has been mentioned before, a prosecution and conviction followed, and here again Harry Wagman must be allowed to speak.³

"Q. Yes, when that account was closed out, Mr. Wagman, I put it to you it was done by two cheques, one on the 29th of November and one on the 2nd of December. The cheque on the 2nd of December, which reduced the balance to zero, was \$51,495.89, and that cheque has been traced to Guaranty Trust, where it was used to discharge a loan which that company had theretofore made and which stood in the name of yourself and Mr. Walton, as I recall it. Do you remember that transaction?

A. I don't know whether it was in my name or Mr. Walton's.

Q. Perhaps it was in Mr. Walton's name, but the money was used to pay off a loan?

A. That is what Mr. Walton said yesterday.

Q. I call to your attention the immediately preceding entry, a withdrawal of \$26,722.70.

A. A deposit, I think.

³Evidence Volume 82, pp. 11032-4.

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Q. I beg your pardon—I said a withdrawal.

A. That is a deposit.

Q. That is a deposit necessary to make up the sum which was paid out to discharge that loan; is that correct?

A. That is right.

Q. And that came from C.P.M., H.W. and W.W., one-third each?

A. Yes.

Q. If you had no interest in that account, why would you and Mr. Morgan and Mr. Walton each pay into that account one-third of the sum required in order to discharge that loan?

A. I really don't know. I don't know where that money came from. I have no explanation for that.

Q. Your handwritten note indicates that it came as to one-third from each of you three, does it not?

A. Yes.

Q. It says 'C.P.M., H.W. and W.W. one-third each'?

A. Yes.

Q. You can't assist us further in this connection?

A. No, I can't.

Q. Is your mind a blank on it?

A. Yes, I couldn't at all recollect where that came from. You see, I didn't particularly go through this here all by myself. I have got cancelled cheques, and I went over these things with, I believe, both Mr. Walton and Mr. Morgan, but I can't recollect at all where this deposit came from.

Q. Since you paid a third of it yourself, according to your notation, that would indicate that at the time you made that note you must have satisfied yourself that you paid the third?

A. Well, it may have come out of some source that I might have had an interest in.

Q. Yes, but you can't help us further on that?

A. No, I am sorry."

After the midday adjournment on November 17, 1966 when Wagman gave his evidence counsel returned to the matter.⁴

"MR. SHEPHERD: Mr. Wagman, before leaving the Account No. 13324 I show you Exhibit 807 again. I think you said, did you not, that it was not the position that each of you owned a third of the account?

A. It wasn't designated as such.

⁴Evidence Volume 82, pp. 11037-41.

Q. Well, indeed it is not designated as such in the sense that the account stands in the name of yourself and Mr. Walton. Did I not understand you to say that there was no arrangement, written, oral or in practice, entitling each of you to one-third of the proceeds of the account?

A. That's right.

Q. I direct your attention to a withdrawal on the 7th November, 1961, of \$60,000. Could you look at the bank account and assist me as to the person for whose benefit that withdrawal was made?

A. My notation is Mr. Morgan, Mr. Walton and myself.

Q. I show you Exhibit 806, a cheque book containing stubs on which notations are written in some instances such as the name of the person receiving the cheque. Is that in your handwriting, and I refer to the stub for cheque 124?

A. No, it is not.

Q. Whose handwriting is that?

A. Mr. Walton's.

Q. That says that it is payable to Messrs. Morgan, Walton and Wagman; is that correct?

A. Yes.

Q. In the bankbook, Exhibit 807, is that your handwriting?

A. Yes, this is mine.

Q. That says 'C.P.M.—W.L.W. and H.W.' Is that correct?

A. Yes.

Q. For what purpose was a withdrawal of \$60,000 made to the credit of you three?

A. I don't recall for what purpose it was withdrawn.

Q. Do you remember the withdrawal taking place at all?

A. Well, when I see this here now I remember it was done.

Q. Apart from seeing a written notation of the fact that there was such a withdrawal do you recall it being made?

A. I believe so.

Q. What did you do with your share?

A. I don't think it was split or I got \$20,000.

Q. What was done with it?

A. I cannot recall just where that went.

Q. It is a significant sum of money, is it not?

A. Yes, it is.

THREE ACQUISITIONS

Q. I don't wish to press you unduly on the matter, Mr. Wagman, but will you not agree that it is uncommon for one to fail wholly to remember what is done with such a sizeable sum?

A. I cannot tell you what was done because, as I say, I do not remember but it could possibly have gone to retire some bank loans, but I do not know.

Q. In any event, do you agree that it was for the benefit of the three of you?

A. I would think so.

Q. In equal shares?

A. I would think so.

Q. Then I direct your attention to the entries in the book of the 31st May and the 5th June, 1961. It is a cheque to C. P. Morgan on the 29th May, 1961, for \$8,333.33, out of this Trio Account, and a second cheque of the 29th May to William L. Walton and H. Wagman, \$16,666.67. Have you found the entry?

A. Yes.

Q. This appears to be another instance of payment coming out of that account in equal shares, does it not?

A. Yes, sir.

Q. What was this payment made for?

A. This doesn't help me or tell what that was for.

Q. I thought perhaps your own memory would assist you?

A. It could possibly be to put into investment in another company.

Q. The source of the money which is distributed equally among you is Account 13324, is it not?

A. Yes.

Q. Do you not agree that this seems to indicate that each of you had a one-third interest in that account?

A. No. At times there were disbursements which indicates it was a third but there are many times when it isn't. It was just as Mr. Morgan directed. It was done that way.

Q. He appears on those two occasions at least to have directed that withdrawals be made shared equally among the three of you?

A. Yes.

Q. I call your attention to a further entry on the 28th March, 1962, in the sum of \$3,000. Have you found that?

A. Yes, sir.

Q. I think there is perhaps a little more explanation recorded on the bankbook itself, is there not?

A. Yes. This seems to be a cheque that was drawn to cover an overdraft at the Bank of Commerce.

Q. So it was withdrawn for the credit of the three of you?

A. That would seem so.

Q. In equal shares, one might presume?

A. It would seem so.

Q. And again the source of the money is Account 13324?

A. Yes.

Q. Do you still assert that the three of you did not have a one-third interest in the proceeds of the account?

A. Yes, sir."

I have endeavoured to give, as did counsel on these occasions, the fullest explanation from the parties exclusively concerned with what has been referred to as the Trio account and I have come to the conclusion that neither W. L. Walton nor Harry Wagman can be believed on any subject during the protracted evidence which they gave, except as to admissions against their own individual interests. I do not believe Walton's evidence about his loss of memory and indeed when the opportunity to produce medical evidence on this point, from the Dr. Greben mentioned by him as being his psychiatrist, came on May 30, 1967, none was tendered. No attempt was made by either of these witnesses to assist the Commission, all their efforts being directed, perhaps not unnaturally, toward protecting themselves. Walton was more logical than Wagman in that he did not attempt to dispute the documented facts. The position taken by Morgan in the evidence given on oath to the Commission on May 3, 1966—when he was aware of the dangerous character of his illness—was that the Trio account passbook, which he had never seen, was used by Walton and Wagman for some of the transactions in which he had a joint interest with them, but he denied being a beneficial owner of the account as such. In connection with these transactions he did not balk at the word "partnership". He summed up his position in answer to a question put by Mr. Shepherd as follows:⁵

"Q. Do you say that with respect to this account that you and Mr. Walton and Mr. Wagman were in partnership in a number of transactions and that you were aware that deposits were being made and cheques were being written into or out of an account of the Guaranty Trust, but you are not able to say that every deposit and every cheque written on account No. 13324 relates to affairs of the partnership?

A. Exactly. In other words, any transactions where it was a three-way deal, where there were cheques handled, it was handled by Mr. Walton and put through that account or an account in the Guaranty Trust. But

⁵Evidence Volume 26, p. 3419.

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I have never seen the account, never got the cheques, never saw the financial statement that came from the bank and personally had no signing authority on that account. And in addition, I was under the impression he was handling it through a trust account."

Unfortunately, among the multitudinous transactions about which Morgan was questioned on this occasion, with so little time available, the circumstances surrounding the acquisition of Aurora Leasing Corporation were not put to him and although he was examined by the trustee-in-bankruptcy of many corporations, the examination scheduled for the estate of Aurora never took place.

Evidence of C. G. King

Carman G. King gave evidence as to his connection with Aurora Leasing on December 21, 1966.¹ He was a shareholder and noteholder and became a director on September 28, 1962 when J. C. Laidlaw became a director and president, and Carl Solomon stepped down from the presidency to be vice-president. When asked how he came to hear of Aurora and make the investment in it he answered, "Well, I had made some considerable capital gains in Atlantic, and I had done the same thing in Commodore Sales Acceptance, so I had come to think that Mr. Morgan was a genius, and that this was the way to make money, to invest in his companies". He recalled being in the western United States and endeavouring to sell Atlantic notes to some insurance companies there, when in the course of a telephone conversation with Morgan the latter told him that he had the chance to buy a leasing company for \$100,000, that this had been offered to Atlantic but the Atlantic board had decided not to go into the leasing business, and that he was looking for people to go in with him as shareholders. At this time King bought 700 shares for \$20 a share and sent a cheque for \$14,000 to Solomon & Samuel. He had the definite impression that 5,000 shares had been bought by a group organized by Morgan for \$100,000, that he was part of the group, and that his shares came directly from Meckler and Lazar or Rashkis. He did not discover that he had bought Morgan's shares until the final hearings in bankruptcy in 1965. At the time he became a director, which was shortly before Aurora became a public company, he understood that it was being managed by Chartered Management Consultants and paid a fee for this service, although he realized that the prime movers in that company were "Wagman in conjunction with Morgan". The financial statements prepared by Walton, Wagman & Co. showed improvement each year and he apparently made no inquiry about the lending policy of Aurora or about the source of its funds. Directors meetings were generally held in the offices of Solomon & Samuel or Solomon & Singer with, as he recollected, Morgan normally

¹Evidence Volume 93.

present. It was not, according to his evidence, until after the Atlantic default that King realized Laidlaw, Solomon and Walter Pahn were Morgan's nominees, and it was only when they declared themselves to be so at that time in a directors' meeting. King, as he and W. P. Gregory testified, was mainly interested in getting Aurora shares listed on the Toronto Stock Exchange, but whenever he made this suggestion Morgan said that he was "saving it for Atlantic". From this and other indications King thought "it was the makings of another company like Commodore Sales Acceptance". Morgan never vouchsafed any explanation why he was not a shareholder or director of Aurora, and King was not curious; hence it is difficult to conclude that he did not appreciate the real status of Laidlaw, Solomon, Canning and Pahn. In the later stages, according to King, when it was difficult to get hold of Morgan he could invariably be found in Harry Wagman's office "where he spent a great deal of his time".

* * *

Such is the story of the acquisition for the sole benefit of C. P. Morgan, W. L. Walton and Harry Wagman of Aurora Leasing Corporation Limited, a company through which millions of Atlantic money were lent in either an imprudent or improper manner and frequently in both, and often indeed to companies in which these three themselves had an interest. Moreover at the end British Mortgage & Trust Company had an 18% interest and W. P. Gregory personally a 17% interest without any representation on the Aurora board, and it will be seen later how Gregory had virtually tied his own hands by borrowing a very large amount from the company on his personal account. Subsequent portions of this report will be concerned with many of the loans made by this company with money provided mainly by Atlantic through Commodore Sales Acceptance in the course of the last four and a half years of its disastrous history.

3

Crest Acceptance Corporation Limited

In comparison with the two acquisitions previously dealt with in this chapter the third was a matter of small moment, but since the company acquired became one of the Adelaide Street group, and since the morality of the transaction is entirely consistent with what has already been exhibited, it must be examined. Crest Acceptance Corporation Limited was incorporated in Ontario by letters patent on January 31, 1958. The permanent directors after transfer of the incorporators' shares were A. Joseph Collinson (representing A.J.C. Investments and

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Holdings Limited), David C. East and Harry Robert Wellman, and the first auditor of the company was Harvey Kenneth Cooper, C.A. appointed at a shareholders meeting on July 2, 1958. In the course of the year substantial purchases of preferred stock were made by a company called Richards Aluminum and in the spring of 1959 were assigned as security to United Dominions Corporation (Canada) Limited. In the latter year Cooper, who had properly ceased to be auditor when becoming a shareholder, acquired common shares from A.J.C. Investments, East and Wellman in a manner not particularly relevant, but, if his evidence is to be believed, as a result of unpaid loans which eventually gave him absolute ownership of A.J.C. Investments itself. In any event by November 16, 1959 Cooper, according to the records of Crest Acceptance,¹ became president, his co-directors being Robert Levine and Shirley Fruitman. Shirley Fruitman was a clerk in the offices of Walton, Wagman & Co. who had prepared the financial statements of Crest Acceptance for the year ending in February 1960, replacing McDonald, Currie & Co. as auditors. On December 30, 1960 there was a transfer of 6,970 shares of Crest Acceptance from A.J.C. Investments to Cooper and on September 18, 1961 the accounts receivable of the company were sold to United Dominions Corporation for \$72,068 accompanied by the redemption of 2,000 of the preferred shares held by United Dominions Corporation and the transfer to Cooper of the balance of 17,000 shares on October 12, 1961. The company at that date had been stripped to its corporate shell and Cooper was looking for a buyer.

H. K. Cooper Approaches W. L. Walton

Cooper was examined before the Commission by both Mr. Shepherd and Mr. Cartwright on March 11, 1966.¹ He said that although Crest Acceptance was without assets it could show losses in the order of \$140,000 to be carried over to subsequent years for income tax purposes, and his own calculation of the value of the company to a purchaser was based on 25% or so of the income tax which might be saved if the company were reactivated and for which he hoped to obtain a sum of at least \$5,000. Upon inquiry among his business acquaintances he found little response and many lower offers, until he broached the subject to W. L. Walton. Cooper was inclined to be evasive about his knowledge of Walton, but conceded that he did per diem work as an accountant for Chartered Management Consultants in late 1961 and early 1962. As has been seen, Shirley Fruitman was his co-director of Crest Acceptance according to that company's records in 1959 and Walton, Wagman & Co. were its auditors. It is most likely that his inquiries as to the company's disposal began and ended with Walton

¹Exhibit 70.

²Evidence Volume 8.

who suggested to him that he might be able to dispose of it for \$11,000. If he did, would Cooper be satisfied with \$9,000? To this Cooper agreed.

Cooper's evidence is to the effect that this agreement was reached in November 1961 and that payment of the \$9,000 was made in instalments by Walton from that time until March 1962; this is in part supported by the deposit book of his account in the Guaranty Trust Company, No. 15924.² Walton in his testimony said that the purchase price was \$11,000. Cooper admitted that an option agreement had been drawn between him and Walton and Wagman providing for a payment of \$11,000, but said that he was the only one who had signed it. I was not impressed with either the coherence or candour of Cooper's evidence as a whole, but on this point I accept his evidence and reject that of Walton. In any event Walton spoke to C. P. Morgan about the availability of the Crest Acceptance shares and the latter eventually indicated his interest and the willingness of Atlantic Acceptance to acquire them. Walton thereupon selected a young lawyer by the name of Leonard Murray Eades, a graduate of 1959, to whom, as he said, he "might have wanted to give some business", and an agreement was entered into between Cooper and Eades dated March 8, 1962 for the latter to buy the issued and outstanding preference shares of Crest Acceptance for \$10,000 and the common shares for \$1,000. If the chronology derived from the face of the document is to be relied on, an agreement was next prepared by Messrs. Osler, Hoskin & Harcourt, dated March 6, in which Atlantic Acceptance Corporation agreed to purchase and L. Murray Eades agreed to sell the outstanding preference and common shares of Crest Acceptance for a total of \$27,000, and to this was annexed a financial statement for the year ending February 28, 1961 and an interim financial statement as at October 15, 1961 prepared by Walton, Wagman & Co.³ An agreement between William L. Walton, described as beneficiary, and Leonard Murray Eades, as trustee, reciting the beneficiary's intention to purchase in the name of the trustee the Crest Acceptance stock, contained a declaration of trust on the part of Eades, and an agreement to indemnify him in respect of any liability which he might incur by Walton. This was drawn in the offices of Hubert J. Stitt, a Toronto lawyer with whom Eades shared accommodation, and was dated March 8.⁴ Of even date with this there is a letter of authorization addressed to L. Murray Eades and signed, as he acknowledged in his own evidence, by William L. Walton in the following terms:

"You are hereby authorized to enter into an agreement in the attached form with Atlantic Acceptance Corporation Limited for the purchase and sale of all the issued and outstanding shares of Crest Acceptance Corporation Limited.

²Exhibit 790.

³Exhibit 793.

⁴Exhibit 795.

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For so doing this shall be your good and sufficient authority.

In accordance with our agreement of trust I undertake to indemnify you and save you harmless in respect of entering into this agreement.”

and to this is attached a copy of the agreement of purchase and sale between Atlantic and Eades with the date and signatures of Morgan and Eades omitted.⁵ The deal was closed by Eades in the offices of Messrs. Osler, Hoskin & Harcourt in the presence of a Mr. Moffat of that firm and of C. P. Morgan. Eades testified that he disclosed to Moffat in the course of the negotiations that he was acting as a trustee, but not the name of his beneficiary.

Atlantic Pays the Trio a 60% Profit

Atlantic's cheque for \$27,000, dated March 8, 1962 and drawn on the Oakville branch of the Toronto-Dominion Bank,¹ was deposited by Eades in his trust account the following day, at which time Eades drew a cheque in favour of Wm. L. Walton for the same amount² and this was endorsed by the latter and deposited in Guaranty Trust account No. 13955. A deposit slip in the deposit book for account No. 13324 in the same institution—the Trio account—on March 9 was acknowledged by Walton in his evidence, and Walton asserted that this deposit was made in accordance with Morgan's instructions. Finally Eades sent his account to Chartered Management Consultants and this was paid on April 19 by a cheque of that company signed by Walton in the amount of \$661.50.³ The minutes of the board of directors of Crest Acceptance for March 8 record a transfer of 10,100 common shares and 17,000 preference shares to Atlantic Acceptance and of one common share each from Cooper, Levine and Shirley Fruitman to Morgan, A. C. Rooney and A. T. Christie. The new board resolved to apply for supplementary letters patent changing the company's name to Adelaide Acceptance Limited and to appoint W. E. Butlin as manager.

W. L. Walton, in his evidence given before the Commission, on oath, made no difficulty about recalling this transaction or identifying the documents in connection with it which were put to him, except as to one and, of course, the most important particular. He claimed that he did not know that Morgan was causing Atlantic to purchase the Crest shares for \$27,000, a mark-up of \$16,000, although he acknowledged receiving the \$27,000 and making the deposits described, but gave the following answers to questions put to him by Mr. Shepherd:⁴

“Q. When did you first learn Atlantic Acceptance was purchasing or had purchased the company for \$27,000?

⁵Exhibit 796.

¹Exhibit 794.

²Exhibit 797.

³Exhibit 798.

⁴Evidence Volume 81, pp. 10866-71.

A. Well, I cannot remember—except after probably Eades had given me his report on it.

Q. If I might just take a moment to assist you on this: I show you, Mr. Walton, Exhibit 792, being a purchase agreement directed to Harvey Cooper, Suite 803, 62 Richmond Street West, on the 8th of March, 1962, generally to the effect that Mr. Cooper shall sell and Mr. Eades shall purchase all the outstanding common and preference shares for \$11,000. Is that the agreement to which you had reference when you said Mr. Eades was to purchase from Mr. Cooper?

A. Yes, I would think so.

Q. Why was Mr. Eades to take it in his name as opposed to you purchasing it in your name?

A. I cannot remember except that I probably wanted to give Mr. Eades a little business.

Q. Then I show you Exhibit No. 795 in which Mr. Eades on the same day, the 8th of March, 1962, declares himself as a trustee for you in respect of these shares of Crest, is that correct?

A. That's right, sir.

Q. And that document is signed by you and Mr. Eades, is it not?

A. That's correct.

Q. Then I show you Exhibit No. 796, Mr. Walton, being a letter addressed to Mr. Eades and signed by you, and also dated the 8th of March, saying that you are hereby authorized to enter into an agreement in the attached form with Atlantic Acceptance Corporation Limited for the purchase and sale of all the issued and outstanding shares of Crest Acceptance Corporation Limited, and the agreement attached, I put it to you, Mr. Walton, is a copy of Exhibit 793, that is to say, the agreement whereby Atlantic agreed to buy the company. Did you sign that direction to Mr. Eades?

A. Yes, that's my signature.

Q. So it would appear, Mr. Walton, you have fallen into error in saying that you didn't know that Atlantic was the purchaser of this company at \$27,000 until some time after you had acquired the company pursuant to Mr. Morgan's instructions, because there you are, Mr. Walton, on the same day, telling Mr. Eades to sell the company to Atlantic for \$27,000, isn't that correct?

A. I never told him to sell it at \$27,000. He had made all the arrangements with Atlantic. I didn't tell him to sell it at any price.

Q. Did you not, Mr. Walton, on the document which I just now showed you, Exhibit 796, instruct Mr. Eades in writing to enter into the agreement for sale with Atlantic Acceptance, a copy of which was affixed to your instructions?

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A. But he did this with Mr. Morgan. He didn't do this with me. I didn't sell it to Atlantic.

Q. I wasn't suggesting that you did.

A. I am sorry.

Q. Looking at Exhibit 796, is it not clear that you in writing instructed Mr. Eades to enter into an agreement with Atlantic Acceptance for the purchase of these shares for \$27,000, dated the 8th of March—the same day as you acquired them?

A. I never saw this agreement, Mr. Shepherd.

Q. Did you sign the direction without the agreement being attached to it?

A. Definitely.

Q. You didn't know then that Mr. Eades was selling it to Atlantic or you didn't know he was selling it for \$27,000?

A. All I knew, he was selling it to Atlantic, but I didn't know the price. I signed this authority for him so that he could deal with Atlantic.

Q. Did you ask him at what price he was selling it to Atlantic?

A. No, Sir.

Q. When did you first learn the price at which he had sold it to Atlantic?

A. After he gave me the cheque, I presume.

Q. And that was the 9th of March, the next day. I show you Exhibit No. 797, which is a cancelled cheque of Mr. Eades' dated the 9th of March, payable to you in the amount of \$27,000, and negotiated on the 9th of March, signed by Mr. William L. Walton for deposit only to the credit of Account 13395, is that correct?

A. That's right, sir.

Q. I put it to you, Mr. Walton, that the documents make it plain that you caused Mr. Eades as your nominee to enter into a purchase agreement with Mr. Cooper for \$11,000 and substantially contemporaneously therewith you instructed Mr. Eades to sell the company to Atlantic for \$27,000, he did that and you received a net profit of \$16,000 and paid it into the Trio account. Do you say that is not so?

A. May I see—when I signed this letter of authority it was for him to enter into negotiations with Atlantic, which he did with Mr. Morgan, and all I did was just give him a letter of authorization to deal with Mr. Morgan and Atlantic. I have never seen this agreement.

Q. I suggest that the wording of the letter has not contained that instruction: 'You are hereby authorized to enter into an agreement in the attached form with Atlantic Acceptance Corporation Limited for

the purchase and sale of all the issued and outstanding shares of Crest Acceptance Corporation Limited', and the attached form refers to a purchase price of \$27,000; isn't that right?

A. But I would not be able to set the price, but I didn't know what value Mr. Morgan sets on it. The only person who would know what the tax loss is worth is one who would know what use to put it to.

Q. When you did find out that Atlantic Acceptance had paid \$27,000 for this company—which you must have found out on the 9th of March when you received the money—did you give any thought as to whether from the point of view of Mr. Morgan this was an honest transaction?

A. Well, I couldn't venture any opinion on that. I could see it was a good deal for Atlantic Acceptance.

Q. But Atlantic Acceptance made money on the tax loss, didn't they?

A. That would appear to be so.

Q. My questions are directed to the issue of why they didn't make an additional \$16,000. When did Mr. Morgan tell you Atlantic Acceptance had purchased for \$27,000?

A. I don't think he told me it but I got this cheque from Mr. Eades.

Q. When did he tell you to put the cheque or the net of \$16,000 arising out of that cheque into the Guaranty Trust bank account?

A. I cannot pin it down to a right date—I don't know when. It must have been some time afterwards.

Q. What date did you pay it in?

A. What day? What deposit?

Q. You have the deposit book there.

A. March 9th on the deposit book.

Q. And that's the same day as you got the cheque?

A. That's right.

Q. So he must have told you that very day to pay it into that account?

A. It appears that way."

Wagman simply denied that he knew anything about the transaction until he had viewed the passbook and deposit book of the Trio account some time later with Walton. He pointed out that the deposit slip in relation to the \$16,000 was entirely in Walton's handwriting.

Thus was Adelaide Acceptance Limited brought into the orbit of Atlantic and added to the Adelaide Street group operated from the executive offices of Atlantic Acceptance. I am satisfied that Morgan, Walton and Wagman knew exactly what they were about, with the possible exception that Morgan and Wagman did not realize that their

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partner contrived to make an additional profit of \$2,000 out of his arrangement with Cooper which was apparently not shared. I am equally satisfied that Eades was an innocent, if incurious, party to a simple but shocking fraud upon Atlantic Acceptance perpetrated by its president in breach of his fiduciary obligation to the company and eagerly abetted by his partners. It is unfortunate that no further inquiries were made by Atlantic's solicitors in this matter and unlikely that Eades would have refused, or having refused, persisted in refusing to disclose the identity of the beneficiary for whom he was providing concealment.

CHAPTER VI

The John Belli Affair

The Revival of "Angelo's"

Thirty years ago and more in Toronto, when Ontario was emerging from the years of scarcity and want known as the Depression, the impulse towards a fuller life was accompanied by an amelioration of prohibitive liquor laws which had first been enacted as a reflection of the sacrifices demanded of Canadians in the First World War. In an area of Toronto then known as "the Village", which has now largely disappeared beneath the annexes of the great hospitals facing University Avenue, was an establishment called "Angelo's". Situated in an old house and sanctioned by one of the early tavern licences in this renaissance period of the public consumption of alcohol, its proprietor dispensed Italian food moderately fortified with beer and wine. The house and indeed the mildly adventurous feeling which frequenting it gave to a pre-war generation have long since disappeared, but the recollection of its name and function survived to inspire a former employee by the name of John Belli to acquire premises at 45-47 Elm Street and do business there as "Old Angelo's Restaurant".

Through his solicitors, Messrs. Crabtree, Crabtree and Stewart, John Belli secured letters patent dated May 30, 1958 for the incorporation of a private company in Ontario by the name of John Belli Operations Limited. The minutes of directors' and shareholders' meetings were curiously silent about any undertaking which the company was formed to acquire. No agreement of sale or assignment of lease is to be discovered in the company's records, but John Belli comes quietly in to accept the transfer of one of the incorporators' shares. It is known, however, from other documents that during the year following granting of the company's charter a debt to Fairfax Investments (Canada) Limited of substantial proportions was incurred in the course

of preparing the Elm Street premises for business and a mechanics' lien certificate was registered against the title. In June 1959 there appeared on the scene two customers men employed by the Toronto stock-broking firm of Gardiner, Watson Limited, John R. Shemilt and Robert L. Hunter. Shemilt has been encountered before, but chronologically at a later stage of his career when he was manager of Netherlands Overseas Corporation Canada Limited, a Canadian subsidiary of the Netherlands Overseas Bank of Amsterdam. How the original connection arose is not clear, but Belli took his financial problems to Shemilt and Hunter who in turn consulted C. P. Morgan. The latter promised his help and the three of them agreed to lend John Belli Operations Limited the sum of \$30,000 in equal amounts of \$10,000. Shemilt and Hunter each contributed \$5,000 from their personal funds, borrowing an additional \$5,000 each from Morgan, who in turn borrowed from the Toronto branch of the Bank of Nova Scotia which, as has been seen, was at this time intimately connected with the initial financing of Commodore Sales Acceptance. Subsequently each of the three contributed a further \$500 on August 17, 1959.

What follows may not, at first glance, be regarded as a transaction of such magnitude as to require a separate chapter of the report. Yet here may be seen emerging, after Morgan had been only six months in Toronto, patterns which may be discerned, with as much clarity as their complexity permits, in all the subsequent operations of the Trio. Conflict of interest so flagrant as to require concealment by the interposition of private companies which they owned or controlled, the employment of untried lawyers in business from which scrupulous practitioners would have recoiled, falsification of records and the secret extraction of dishonest profits from a borrower of Atlantic funds may be identified in this, the earliest of their joint undertakings.

Financing John Belli Operations Limited

The minutes of a meeting of the board of directors of the company dated June 2, 1959¹ show 3,000 Class A preference shares and 1,000 Class B preferred shares each with a par value of \$10, and 19,997 common shares with no par value, as unissued in the treasury, Belli, Shemilt and Hunter each holding one share, and these three at a meeting of the shareholders on the same date resolved that the auditors of the company should be Walton, Wagman & Co. Subsequently on June 4, 10,000 common shares were issued to John Belli who transferred 3,334 of them to John R. Shemilt. Two agreements bearing the same date were executed. The first² is between Belli, Shemilt, Hunter and Morgan wherein it is recited that John Belli Operations Limited has acquired a dining

¹Exhibit 184.

²Exhibit 2086.

room licence from the Liquor Licence Board of Ontario for the sale of beer and wine with meals, that John Belli has obtained a lease of the Elm Street premises which contains covenants that Belli will assign this lease to the company of which he is to become president and Shemilt treasurer, and that he will give a promissory note to Shemilt, Hunter and Morgan for \$30,000 and interest at current bank rates for which the latter agree to deposit that sum in the company's bank account. A third of the issued capital stock is to be held in trust by Shemilt for Hunter, Morgan and himself. The second agreement³ is between the company and Fairfax Investments, reciting the debt owed to the latter as \$53,944.57 on which \$7,000 is acknowledged to have been paid, and the parties agree that \$30,000 will be paid to Fairfax Investments on account and the balance of \$16,944.57 be secured by a note payable on September 30, 1959, and collaterally secured by a chattel mortgage, in return for which Fairfax Investments agrees to vacate its mechanics' lien. Fairfax Investments directs John Belli Operations to pay \$2,525 of the \$30,000 to Hastings Park Estates Limited. Thereafter a third agreement, made on December 7, 1959⁴ between John R. Shemilt as trustee and John Belli, Robert L. Hunter, C. Powell Morgan and John R. Shemilt individually as beneficiaries, provides that Shemilt should hold the 10,000 issued common shares as trustee for Belli to the number of 6,666, for himself and Hunter as to 1,000 each, and for Morgan as to 1,334, reciting payment by the beneficiaries of 10¢ per share. An unusual provision provided that the trustee should transfer or otherwise deal with these shares only at the direction of Morgan and to the exclusion of the other beneficiaries; execution of this agreement was witnessed by Harry Wagman.

Another directors' meeting was held at the office of Solomon & Samuel on June 21, 1960 and according to the minutes was attended by Belli, Hunter and Shemilt. On this occasion, as a means of reducing the company's indebtedness to the shareholders, the following issue of preference shares was made:

	<i>Amount of Indebtedness</i>	<i>Number of Class A Preference Shares</i>
John Belli	\$13,800	1,380
C. Powell Morgan	2,300	230
John R. Shemilt	2,300	230
Robert L. Hunter.....	2,300	230

This was described in the minutes as settlement in full of the company's indebtedness to them.

The next item of business was the announcement of a loan by Atlantic Acceptance Corporation Limited of \$65,132.91 on condition

³Exhibit 2099.

⁴Exhibit 2087.

that the company discharge its indebtedness to Executive Acceptance Corporation Limited, Commodore Sales Acceptance Limited and the Premier Finance Corporation Limited in the total amount of \$39,759.93; this loan would be secured by a chattel mortgage yielding interest at 14.4% per annum, and the shareholders of the company would assign to William L. Walton as trustee all the outstanding Class A preference shares. Transfer of the preference shares to Walton, who, incidentally was president of Executive Acceptance Corporation, was duly made, and appended to the minutes of this meeting was a schedule of shareholders showing Belli with 6,667 and Shemilt with 3,335 common shares, Hunter with one common share and Walton with 2,070 Class A preference shares. It will be noted that, according to this statement, John Belli's common shares do not appear to have been transferred to Shemilt pursuant to the agreement of December 7, 1959.

Walton's Disbursement of the Atlantic Loan

It had been agreed, according to the minutes, that in this consolidation and repayment of the debts of John Belli Operations moneys due to creditors would be disbursed by Atlantic Acceptance. In fact it was done by Walton, Wagman & Co., as appears from a letter dated June 20, 1960, addressed to John Belli Operations and signed for his firm by William L. Walton, to which was appended the following statement of receipts and disbursements:¹

STATEMENT OF RECEIPTS AND DISBURSEMENTS RE: CONSOLIDATION OF LOANS AND FINANCE CONTRACTS FOR JOHN BELLI OPERATIONS LIMITED

Received from Atlantic Acceptance Corp. Limited\$65,132.91
Disbursed on behalf of John Belli Operations Limited.

Premier Finance Limited.....	\$12,096.00
Commodore Sales Acceptance Limited	16,133.07
Executive Acceptance Limited	11,350.86
Mr. C. P. Morgan	10,500.00
Mr. John Belli	14,752.98
Mr. John Shemilt	10,500.00
Mr. R. Hunter	10,500.00
	<u>\$85,832.91</u>

Less: Payments re: Subscription for Preferred Shares as follows:

Mr. C. P. Morgan	\$ 2,300.00		
Mr. John Belli	13,800.00		
Mr. John Shemilt	2,300.00		
Mr. Robert Hunter	<u>\$ 2,300.00</u>	<u>\$20,700.00</u>	<u>\$65,132.91</u>
Balance on Hand			Nil

¹Exhibit 1852.

Walton employed account No. 13324 at the Guaranty Trust Company of Canada, previously referred to as the Trio account, and a deposit note² indicates that the sum of \$65,132.91 was deposited to the credit of that account on June 21, noted as "Atlantic re John Belli". The manner in which this disbursement was carried out is copiously illustrated on Table 34,³ which was prepared and submitted in evidence by Mr. B. W. McLoughlin. The top line of the analysis shows the various liabilities of John Belli Operations which were consolidated, and includes the debt to Hastings Park Estates Limited apparently not yet paid in accordance with the direction of Fairfax Investments of the previous year. These are the ledger balances as at June 20, 1960. The loans payable account No. 37 consists of the \$1,500 advanced by Shemilt, Hunter and Morgan and the notes payable of the \$30,000 first advanced by these shareholders. The John Belli account No. 50 consists of moneys personally contributed by John Belli. The second and third lines show the way the consolidation and payment were treated in the books of John Belli Operations according to the journal and ledger entries of June 20. Next are disbursements made on behalf of the company according to the statement of Walton, Wagman & Co. referred to above, and it will be noted that, contrary to what is said in the minutes, the issue of the 2,070 Class A preference shares is regarded only as a part payment of the indebtedness to shareholders, so that John Belli is considered to be owed \$952.98 and Shemilt, Hunter and Morgan \$8,200 each. Below this is set out a list of the actual payments made in settlement of the company's debts by Walton out of the Trio account, and it will at once be seen that Executive Acceptance Corporation, Premier Finance Corporation and Commodore Sales Acceptance, the affairs of the first being in the hands of Walton, and the second and third in those of Morgan, were settled at a substantial discount amounting in the aggregate to \$7,579.93. All these disbursements are confirmed by debit vouchers relating to the Trio account.⁴ The two payments in respect of Shemilt and Hunter, in the amount of \$4,900 each, to the Bank of Nova Scotia represent repayment of Morgan's loan to them and the bank's loan to Morgan of the amount outstanding. The final portion of the accountant's analysis deals with the allocation of the variance of \$7,579.93 created by the discounted settlement of the claims of Executive Acceptance, Premier Finance and Commodore Sales Acceptance and still remaining in the Trio account. This is accounted for by cheque No. 47 paid to the order of cash for \$2,500⁵ which is endorsed "W. L. Walton", under which appears the signature "B. Livingstone" and the notation "25 x 100", and the withdrawal of \$2,500 corresponds to an entry in the passbook

²Exhibit 809.

³Exhibit 2106.

⁴Exhibit 810.

⁵Exhibit 810.

of the Trio Account⁶ for June 21, 1960 containing a notation in pencil "cash re C.P.M.". Cheque No. 46 dated the same day was issued to Solomon & Samuel in the amount of \$79.93 and corresponded to a credit in that firm's clients' ledger for Atlantic Acceptance particularized as "Atlantic fees & disb. re John Belli Operations". It is perhaps of only passing interest that no statement of account by Solomon & Samuel in this amount has been located among the many documents furnished by that firm to the Commission. The balance of \$5,000 remained in the Trio account.

The Aurora Leasing Loan

The next example of assistance to John Belli Operations Limited at Morgan's behest occurred over a year later when Aurora Leasing Corporation advanced \$12,250 to defray the company's expenses, the general journal of the latter recording a total liability of \$19,500 and the balance of \$7,250 being a prepaid interest charge.¹ Out of this were paid legal fees to Messrs. Crabtree, Crabtree and Stewart of \$1,250 for services ending in June 1959, accounting fees paid to Chartered Management Consultants described as prepaid expenses of \$1,000 and an amount of \$10,000 described as goodwill, the whole \$19,500 being annotated as "Aurora Leasing Corp'n Ltd. to record expenditures made by the latter on our behalf". Aurora's only security was a note dated December 1, 1961, executed for the company by Belli and Shemilt but not under seal.

The item set up as goodwill refers to two amounts of \$5,000 both paid to John Belli, one on June 29, 1961 and the other on December 14 of the same year. The first consisted of a cheque made payable to Solomon & Samuel in trust, not recorded in that firm's trust account but negotiated by David M. Samuel, the proceeds being presented to Shemilt in the presence of Belli at Samuel's office in the form of fifty \$100 bills. For this Shemilt and Belli signed a receipt. Belli was examined by Mr. Cartwright on two occasions on January 20 and February 13, 1967 respecting this transaction.² On the first occasion he said that he had received the money personally, that Old Angelo's Restaurant held a licence to serve beer and wine with meals and that in the spring of 1961 application was made for an extension to it permitting the sale of liquor with meals. The company received notice dated May 18 that a hearing of applications would be held on June 20, and Belli then approached Morgan and suggested that it pay him \$5,000 so that he might make a donation to a "political fund" in that amount to ensure success. Morgan agreed, but before Belli could obtain the money or pay it to anyone, the

⁶Exhibit 807.

¹Exhibit 2093.

²Exhibits 4878-9.

Liquor Licence Board of Ontario approved the application and advised him by letter dated June 21. Then on June 29 Shemilt handed him the \$5,000 in cash and Belli stated that he duly made the donation to the "political fund". He could not identify the fund and, when pressed, he could not remember the name of the person to whom he paid the money; he said he handed it to someone at the restaurant in a plain envelope on June 29 or 30. When Mr. Cartwright persisted in asking the identity of the recipient of the money Belli said he wished to retain counsel and the hearing was adjourned for this purpose. On re-attending with counsel, the witness repeated his account of paying out this money and refused to answer further questions on the matter on counsel's advice, essentially upon the ground that, having given the assurance that no one connected with Atlantic Acceptance received the money and having freely admitted that he received it himself, further questions respecting what he did with it were irrelevant and outside the Commission's terms of reference. Suffice it to say that subsequent investigation has not disclosed that any of this money found its way into the hands of anyone connected with Atlantic Acceptance or any of its subsidiary or associated companies, and that no subsequent extension of "Old Angelo's" liquor licence has been obtained.

The second cheque was made payable to John Belli,³ was cashed by him and the proceeds divided between himself, Shemilt, Hunter and Morgan. According to Shemilt,⁴ he received \$2,000 of which he remitted \$1,000 to Hunter, the balance being split between Belli and Morgan. He described it as a dividend "in the very loosest sense of the word" and made a point of the fact that the loan from Aurora had been repaid. He knew of no service performed up to that time by Chartered Management Consultants and, although he was secretary-treasurer of John Belli Operations, maintained that he did not then even know its name. The payment in any event was not connected with the normal accounting services of Walton, Wagman & Co. As to the prepaid interest of \$7,250 out of the total of \$19,500 lent by Aurora, Shemilt believed that this included rental charges of certain equipment installed in the premises of Old Angelo's Restaurant.

Departure of Belli and Hunter

By mid-1962 the affairs of John Belli Operations were far from prosperous and it was clear that both Morgan and Shemilt attributed such difficulties to John Belli. Shemilt described how he told Belli that he would buy him out for \$20,000 or, if Belli preferred, he could buy Shemilt out for \$10,000. On June 12, 1962 an agreement was entered into between John Belli, John R. Shemilt and John Belli Operations Limited which recited the shareholdings referred to in the minutes of

³Exhibit 2083.

⁴Evidence Volume 32.

June 21, 1960 and provided for Belli's sale to Shemilt of the former's 6,667 common shares and 1,380 preference shares for the price of \$20,000, and the further payment to Belli by the company of a retirement allowance amounting to \$12,500, payable in instalments of \$100 over 125 consecutive weeks. Further provision was made for the purchaser to secure the approval of the transfer by the Liquor Licence Board and the vendor to assign the lease of the premises to the company which had never yet been done.

This was followed by a supplementary agreement dated the following day which included among other things a provision for the purchaser and the vendor to split the transfer fee of the Liquor Licence Board between them. Both were drawn by Solomon, Singer & Rosen, the firm not only having been enlarged but having moved to the Bank of Nova Scotia building at 44 King Street West, away from the immediate neighbourhood of the offices of Walton, Wagman & Co. At the same time Shemilt by mutual arrangement with Hunter bought for himself the latter's interest since Hunter, as Shemilt said in evidence, had financial problems of his own and was anxious to withdraw. The minutes of a meeting of the board of directors dated June 29 reflect the transfer of common shares to the number of 6,666 to Shemilt and one to John Canning, an employee of Chartered Management Consultants, and of one common share from Hunter to J. C. Laidlaw, Canning and Laidlaw on the same day executing declarations of trust that they held their single shares for Shemilt. The minutes are silent about the disposition of the preference shares of which John Belli was a beneficial owner but a letter to Shemilt from Solomon, Singer & Rosen, signed by Carl Solomon and dated July 11, reporting on the transaction, enclosed an acknowledgment and direction addressed to William L. Walton as trustee, acknowledging that Belli had no further interest in 1,380 of the company's preference shares and directing him to assign them to such persons as Shemilt himself might direct. Solomon also reported that a certificate for Belli's 6,667 common shares had been cancelled and that certificates had been issued for one share each to Shemilt, Laidlaw and Canning and four certificates to Shemilt, consisting of one for 3,334 and three for 2,221, 2,222 and 2,223 shares each.¹ Two-thirds of the common shares were therefore in the hands of Shemilt and two employees of Chartered Management Consultants, and Shemilt's were in a form which strongly suggested an equal division, either completed or impending, among three associates. Indeed copies of this letter were sent to Morgan and Wagman.

This transaction was financed by Chartered Management Consultants; its books² record a loan from the Canadian Imperial Bank of Commerce of \$25,000 obtained on July 4, 1962, and the company's bank loan ledger is marked, "re Belli" with respect to the entry of

¹Exhibit 1849.

²Exhibit 1773.

\$25,000. Three cheques were issued by Chartered Management Consultants, the first made on June 29 being to Solomon, Singer & Rosen in trust in the amount of \$17,500, the second the same day to the Guaranty Trust Company of Canada in the amount of \$5,000 and the third to C. P. Morgan for \$3,227 on July 4.³ The first cheque was used by Solomon to complete the transaction whereby Belli's interest in John Belli Operations was purchased, the total purchase price of \$20,000 being reduced by one-half of the estimated transfer tax in respect of the company's liquor licence in the amount of \$2,500 and by security transfer tax in the amount of \$20, and the net amount paid on closing to Belli's solicitors was \$17,480. The second cheque was for the estimated amount of the licence transfer tax and paid into Shemilt's savings account at the Guaranty Trust Company. The third to Morgan, drawn on July 4, requires some explanation. The cash disbursement sheet of Chartered Management Consultants on which these payments are recorded shows in relation to it the following notes:

1656 Pref. at \$10—16,560

6667 Common, \$1—6,667

These amounts are then added together to produce \$23,227 under which is the notation "paid \$20,000", the difference being of course the amount of Morgan's cheque. This amount which was deposited in Morgan's account No. 456-347 at the Bank of Nova Scotia⁴ represents the excess of the valuation of 1,656 preference and 6,667 common shares over the amount of the price paid to John Belli of \$20,000. The sum of \$25,727, being the total of the three cheques issued by Chartered Management Consultants, is shown by that company as an account receivable from John Belli Operations Limited and appears as such in the next balance sheet. On July 5, 1963, just a year later, that amount is shown as being received, thus clearing the balance of the account.

Walton's Working Papers

The documents relating to the part played by Chartered Management Consultants in this transaction are all part of those seized by the Department of National Revenue (Taxation) from the offices of Walton, Wagman & Co. on December 11, 1963 and among them is a handwritten memorandum on the letterhead of Atlantic Acceptance Corporation Limited. It sets out, in what would appear from other comparisons to be Walton's hand, the shareholdings in John Belli Operations of Belli, Shemilt, Hunter and Morgan as reflected in the agreement of December 7, 1959, but showing a revision of the amount of preference shares, consciously made, to give Shemilt and Hunter 207 preference shares and Morgan 276 preference shares, indicating a transfer from

³Exhibit 1773.

⁴Exhibit 2074.

Shemilt and Hunter of 46 preference shares to Morgan which is nowhere confirmed by the company's records. The memorandum goes on to arrive at the figure of \$3,227, the amount paid to Morgan, and is apparently an attempt to make the preference shareholdings correspond to the ratios of the common shareholdings with Belli holding 66⅔ %, Morgan 13⅓ %, and Hunter and Shemilt 10% each. The total therefore of Belli's preferred stock at \$13,800 and common stock at \$6,667, and Morgan's 276 preferred at \$2,760, gives a figure of \$23,227 from which \$20,000 is deducted to produce the balance paid to Morgan as has been seen; this calculation of course depends upon valuing the common shares for the first time in the company's history at \$1 per share. Chartered Management Consultants therefore financed the purchase not only of the interest of John Belli in John Belli Operations but of 276 preference shares said to belong to C. P. Morgan; and in spite of the evidence of written agreements, the statement of investments of C. P. Morgan, William L. Walton and H. Wagman as at August 31, 1962 previously referred to¹ shows, under the heading "Shares in Private Companies—Valued at Cost", an entry of 6,669 common and 1,656 preferred shares of John Belli Operations Limited valued at \$22,500, indicating by this time an actual acquisition through Chartered Management Consultants by the Trio of all Belli's and Morgan's preference shares and the two qualifying shares held by Canning and Laidlaw. This valuation is equivalent to the gross amount payable to Belli and one-half of the estimated amount of the Liquor Licence Board's transfer fee.

Another working paper of Walton's throws additional light on this transaction and on the care taken by Walton to hold the scales evenly in a Trio affair. It begins by showing, opposite the names of John Belli, John R. Shemilt and R. L. Hunter, shareholdings in two columns, the first being described "As per L.C.B. forms", and the second headed, "Should be as set out below". There is no doubt that the heading of the first column refers to the forms required to be filed with the Liquor Licence Board of Ontario on applications for granting renewal or transfers of licences under the Liquor Licence Act, as the evidence of Shemilt indicated,² and not to the Liquor Control Board which is a different body. However, for the benefit of the Board, John Belli is shown as holding 6,667 common and 1,380 preference shares, John R. Shemilt 3,335 common and 690 preference shares and R. L. Hunter one common share; then the figures as they "should be" are set down with Belli's holdings the same, Shemilt having 1,001 common shares and 207 preference shares and the same amount for Hunter, below which appears "Morgan" with 1,334 common and 276 preference shares, both columns totalling 10,003 common and 2,070 preference shares. Below that there

¹Table 30.

²Exhibits 1679.3 and 1679.4.

appears a note which generally corresponds with the number of shares according to the certificates issued and reported upon in Carl Solomon's letter to Shemilt of July 11, 1962, but with certain initials annexed, so that the entry appears:

"JRS	3,334
CPM	2,223
WLW	2,223
HW	2,223"

Then inside a pencilled square is the legend: "true ownership as follows, Belli 66⅔ %, Shemilt, 10%, Hunter 10%, Morgan 13⅓ %, totalling 100%", and the notes continue "John Belli shares are worth as follows based on today's purchase price:

1380 pref at \$10	\$13,800
6667 common shares for	6,200
	<hr/> \$20,000

Sale price of common shares is 93¢"

Based on this calculation Walton goes on to value Morgan's "present holdings" of 276 preference and 1,334 common at \$4,000.62 and ends with the note "W.L.W. and H.W. will pay C.P.M. ⅔ of \$4,000.62—\$2,667.08". Of this treatment of the matter Shemilt firmly maintained that he knew nothing and could not explain the fact that the certificates actually issued to him were four in number, three of which were for equivalent amounts. He said that the decision to buy out Belli was his own, and that Morgan had told him to go ahead and not to worry about the money which would be provided.

Shemilt Buys out Morgan with an Aurora Loan

Shemilt's management of Old Angelo's Restaurant continued for a year thereafter without apparent incident. There is no evidence of his having paid any interest on the money advanced by Chartered Management Consultants, and indeed considering the part he had played in the acquisition of the minority interest in Commodore Sales Acceptance there was every reason why he should be treated tenderly by Morgan. If John Belli had elected to buy Shemilt out in June, 1962 for the suggested figure of \$10,000, and if, as Shemilt stated in evidence, that \$10,000 would have included a valuation of C. P. Morgan's interest in the business, the situation had changed markedly by July 1963. At this time, according to Morgan,¹ Shemilt felt he was working too hard and getting too little out of John Belli Operations and was anxious to buy him out. Buy him out he did, and two documents having a bearing on the "pay-out", to use Morgan's word, must first be looked at. At a

¹Evidence Volume 26.

meeting of the board of directors of John Belli Operations held in Solomon's office on July 2, 1963 the board approved the transfer of the two shares held by Canning and Laidlaw to Geraldine M. Shemilt and Shirley Robertson. The meeting was then advised that Aurora Leasing Corporation Limited was prepared to lend the company \$75,000 at 12% to be secured by a chattel mortgage on the company's equipment, provided that it discharged its indebtedness to Atlantic Acceptance Corporation, Adelaide Acceptance and Aurora Leasing Corporation in the aggregate amount of \$44,657.59. The acceptance of this loan and compliance with the conditions attached to it having been decided upon, the meeting was advised that 2,070 Class A preference shares of the capital stock of the company registered in the name of William L. Walton as trustee were to be transferred to John R. Shemilt, these shares being described as held by Walton as collateral security for the indebtedness to Atlantic Acceptance. Finally the seal was set on the new regime by a decision to apply for supplementary letters patent changing the name of the company from John Belli Operations Limited to Old Angelo's Restaurant Limited. The second document is an agreement dated July 2, 1963² between C. Powell Morgan, John R. Shemilt and John Belli Operations Limited emanating from the offices of Solomon & Singer which begins with the startling recital that Morgan is the "registered and/or beneficial owner of 2,070 Class A preference shares in the capital stock of the company", continues by reciting the indebtedness to Atlantic, Adelaide and Aurora and proceeds with the words "and whereas Morgan has certain claims against Shemilt which Shemilt has and does hereby acknowledge". Morgan thereupon agrees to sell his 2,070 preference shares held for him by Walton in trust, releasing Shemilt from all claims, and Shemilt agrees to pay to Morgan the sum of \$100,000 to be applied as follows:

(a) The purchase price for the said 2070 Class A Preference Shares	\$20,700.00
(b) To discharge the indebtedness (except under a certain lease between Aurora Leasing Corporation Limited and Company) to Aurora Leasing Corporation	10,000.00
(c) To discharge the indebtedness to Atlantic Acceptance Corporation Limited	24,657.59
(d) To discharge the indebtedness to Adelaide Acceptance Limited	10,000.00
(e) The balance in full satisfaction of any claims which Morgan may have up to the present time against the said Shemilt	34,642.41
	<u>\$100,000.00"</u>

²Exhibit 1679.1.

Walton, strangely enough, is not a party to the agreement execution of which is witnessed by Irwin Singer.

When the first recital as to Morgan's ownership of the whole issued and outstanding preferred stock was put to him Shemilt said that he could not explain it and that it was not correct.³ He did not consider the constituents of the \$100,000 figure important, but emphasized the fact that he had gone to Morgan, told him that he was in a position to repay the loans to him and to buy out Morgan's interests and they had agreed on the figure of \$100,000. The amounts representing the sale of 2,070 preference shares and satisfaction of "any claims" of Morgan against Shemilt were, according to the latter, merely balancing figures, the essence of the transaction with Morgan being payment of the trade debts to Atlantic, Aurora and Adelaide out of \$100,000 and the payment to him of the balance. No reconciliation is possible between the purport of this transaction and the beneficial ownership of the shares of John Belli Operations which, as is known from the position reached after acquisition of John Belli's interest in the previous year, must have been as follows:

	<i>Common</i>	<i>Preferred</i>
Trio	6,669	1,656
Morgan	1,334	—
Shemilt	2,000	414
	<u>10,003</u>	<u>2,070</u>

Funds for this purchase were provided by Aurora Leasing Corporation in the form of a loan to John Belli Operations of \$75,000 and Shemilt borrowed \$22,000 from the Royal Bank of Canada, providing \$3,000 from his own funds, a total of \$100,000 being paid to the trust account of Solomon & Singer which again acted as the channel of disbursement. All the cheques were dated July 4, Atlantic, Adelaide and Aurora were paid in the amounts set out above and two cheques were issued to C. Powell Morgan, one for \$20,700 in respect of the preference shares and the other for \$34,642.41.⁴ John Belli Operations treated the difference between the \$75,000 loan payable to Aurora and the sum of the trade debts to Atlantic, Aurora and Adelaide of \$44,657.59 as a loan payable to it by John Shemilt in the amount of \$30,342.41 as at July 31, 1963. Morgan deposited both cheques in the total amount of \$55,342.21 in his account No. 753126 at the Toronto-Dominion Bank on July 5.⁵ On the same day a cheque payable to Dallas Holdings Limited, a Trio company, was issued in the amount of \$28,000 which was treated by it as a reduction of loans

³Evidence Volume 32.

⁴Exhibit 1045.1.

⁵Exhibit 2076

payable by "W.W., H.W. and C.P.M." and another cheque payable to Chartered Management Consultants in the amount of \$27,227, which, as noted above, balanced the amount of \$25,727 shown as being an account receivable in the previous year, relating to the purchase of Belli's stock and Morgan's 276 preferred shares in John Belli Operations. The remaining \$1,500 was shown in the cash receipts book of Chartered Management Consultants as "Triangle" and again as "T.W.", and on the cheque itself⁶ there is also a note "re J.B. 25727, T.W. 1500." This is believed to relate to a concern called Triangle Warehousing Limited, known to have been a Trio company engaged in advancing money against warehouse receipts, and to which a contribution of \$1,500, represented as being \$500 from each of Morgan, Walton and Wagman, has been identified.⁷ Its operations do not appear to be relevant to this inquiry and mention of its existence is only made because of C. P. Morgan's insistence, both in evidence before the Commission⁸ and in his evidence given on discovery in the bankruptcy of Dallas Holdings Limited,⁹ that it related to a profit he had made on the stock market in shares of an oil company. Since this assertion was repeated twice, accompanied by determination to have the payments made to Chartered Management Consultants and Dallas Holdings duly recorded as if they were not for his own benefit, it seems unlikely that it is attributable merely to a lapse of memory.

Shemilt's contention about this transaction, so far as it relates to the method of acquiring the full beneficial interest of all the issued stock of John Belli Operations, is simply that he was either not aware of its details, or, if he was, they made no impression upon him, because the real arrangement, stripped of all fictions, consisted in getting his hands on \$100,000 and paying off Morgan and his companies in exchange for the stock. His knowledge of the arrangement was doubtless sufficiently exact, because on July 2 he wrote a letter on a plain sheet of paper to Morgan in the following terms:¹⁰

"I refer you to an agreement dated July 2, 1963, made between ourselves and others whereby, among other things, I agreed to pay to you the sum of \$34,642.41 in full satisfaction of your claims against me.

I acknowledge that these claims arose from moneys advanced by you to me to enable me to purchase certain shares of stock."

Moreover he received a copy of Irwin Singer's reporting letter, addressed to Aurora Leasing Corporation and to the attention of Harry Wagman,¹¹

⁶Exhibit 1915.

⁷Table 30.

⁸Evidence Volume 26.

⁹Exhibit 3677.

¹⁰Exhibit 2108.

¹¹Exhibit 1679.2.

in which, amongst other things, the details of the agreement of July 2 are carefully summarized. There is no mention in either of these documents of C. P. Morgan's 1,334 common shares and, indeed, in the application for transfer of the liquor licence consequent upon Shemilt's apparent purchase from Belli in the preceding year,¹² Shemilt is shown, attested by himself, as the owner of 10,001 common shares, being all the issued common shares except those registered in the names of Canning and Laidlaw. It is unnecessary for the purposes of this report to pursue the history of Shemilt and his enterprise any further, other than to say that he financed his own position by having the company redeem the 20,700 preference shares at par and lend him an additional \$22,000 secured by a second mortgage on his house bearing interest at 4%. The loan from Aurora was, moreover, and is in good standing.

C. P. Morgan's Profit

From his original investment of possibly \$10,633.40 and the substantial loans made by Atlantic and its subsidiaries to a company with no assets, unless one considers to be such the lease of the Elm Street premises which enured to the benefit of John Belli personally, Morgan did moderately well. He received a total of \$10,700 on June 21, 1960 as a result of Walton's consolidation and settlement of the debts of John Belli Operations at that time, together with a possible third interest in the \$5,000 kept by Walton in the Trio account after the settlement of the claims of Commodore Sales Acceptance, Executive Acceptance and Premier Finance at a discount and the writing off to "deferred discounts" by those companies of the amounts not paid, a transaction which subsequently led to criminal action being taken against Walton and Wagman. On December 14, 1961 he split \$3,000 with John Belli in proportions which are not known, but from which it may be fairly assumed he got not less than \$1,500. On July 4, 1962 he received from Chartered Management Consultants the sum of \$3,227 from the final settlement with John Belli, and from the \$55,342.21 received by him in the final settlement with John Shemilt he benefited to the extent of one-third of this amount by paying all but \$115.21 to two companies, Dallas Holdings and Chartered Management Consultants in which he had a third interest. If one treats the payment to Chartered Management Consultants as including repayment for the money advanced to enable Shemilt to buy out Belli, and on the assumption that the \$3,227 was not split with Walton and Wagman, which can only be invalidated by Walton's fugitive working paper, he made roughly \$14,500. Walton and Wagman's profit was of a lower order, but it was the Trio's first joint venture and is mainly remarkable for the fact that Morgan allowed

¹²Exhibit 1679.4.

himself to appear by name in a number of documents. Morgan's evidence of his own connection with the John Belli affair is necessarily brief because it was taken on May 3, 1966, the day before he entered hospital:¹

"Q. Were you a partner of Mr. Walton and Mr. Wagman in respect of some transactions?

A. Yes.

Q. I refer particularly to the interest which I believe you had in John Belli Limited, for example?

A. Well, in John Belli, it was—the story in that was that when Mr. Belli got started with his restaurant, I assisted him in getting on his feet. There were two other partners at that time, Mr. Shemilt and Mr. Hunter and myself and in view of the fact that in order to apply for a licence, which they were attempting to get at that time, some nominee shares were put in John Shemilt's name. Eventually the company was taken over by John and the interest I had, which had been turned over to, I believe it was Chartered Management and Dallas Holdings prior to that time, was paid out and the cheques representing the money that had been paid to me on one day was correspondingly paid over to Dallas Holdings and to Chartered Management, I believe, on the next day. I believe in my testimony in the examination for discovery I even produced those cheques and showed them to the Commissioner.

Q. Prior to Mr. Shemilt acquiring your interest which was later the interest of Chartered Management, did you alone beneficially have these shares or were you in partnership with Messrs. Walton and Wagman in respect of your ownership?

A. No. I was in partnership with Hunter and Shemilt and myself. Walton and Wagman came in later. I believe I was on a guaranteed loan at the Bank of Nova Scotia. When this was paid off, at that time I divested my personal interest in them and turned them over to these two companies I mentioned.

Q. Mr. Wagman, as has been given in evidence, frequently refers to this account in his working papers and other documents as the Trio account. To whom is he referring?

A. I couldn't tell you.

Q. Do you say that you had no interest in moneys deposited in this account?

A. No, I didn't say that. I said they used this account to deposit moneys in transactions in which we had a third interest each. I never had any signing authority on this account or actually didn't know of its existence until it was brought out in the Royal Commission."

¹Evidence Volume 26, pp. 3415-7.

Later he added the following:²

“Q. What was the first transaction in which you and Mr. Walton and Mr. Wagman were partners?

A. I believe it was John Belli.

Q. Were they then partners from the beginning in John Belli?

A. No. When I took it over—I was originally a partner of John Shemilt and Hunter. But that was changed over and John Belli was kicked out because he was having his fingers in the till. At that particular time I turned over the common share interest on a sales agreement with John Shemilt, and Hunter was a minor partner. My interest was turned over—I believe the preferred stock was turned over to Chartered Management and the common stock, I believe, was turned over to Dallas.

Later on when John, who was supervising the restaurant when Mr. Belli left, kicked over the traces and felt he was doing too much work and not getting enough benefit and we arranged a pay-out to Chartered Management and to Dallas which was satisfactory to him.”

Since Carl Solomon admitted being the draftsman of the agreement of December 7, 1959 which made Shemilt a trustee for the holders of the issued common shares, and which seems to have been a dead letter, and since evidence has been referred to which indicates that the firm of Solomon & Samuel took over from Crabtree, Crabtree & Stewart the task of acting as solicitors for John Belli Operations in the summer of 1959, thereafter acting regularly as solicitors for all parties to the various transactions which have been noticed, it is reasonable to assume that this was the first piece of business given to Solomon by Morgan in the course of a long association. Solomon's evidence given to the Commission on May 16, 1966, specifically about the John Belli affair, can be justly described as wary. Two examples of questions put to him by Mr. Cartwright and myself may suffice:³

“MR. CARTWRIGHT: May I then assume that it was some time prior to the month of December, 1959, that you commenced to act on behalf of either John Belli Operations Limited or the principals of that company?

A. Yes.

Q. And who gave you your original instructions, and who was your client?

A. From the records, Mr. Cartwright, it would appear my client was John Belli Operations Limited. The instructions, from the records, I would assume, came from Mr. John Belli himself at the time.

Q. At the inception, did you ever receive any instructions from Messrs. Walton, Morgan, or Wagman?

²Evidence Volume 26, pp. 3422-3.

³Evidence Volume 33, pp. 4587-9 and 4596-7.

A. I don't recall any specific instructions. I think from the records it indicates the reporting letters when sent to John Belli Operations Limited were sent to Mr. Morgan, and that would be on the instructions of Mr. John Shemilt.

Q. Mr. Solomon, I would like to deal with this agreement of December 7th, 1959, the draughts and the original backing we have already discussed. I will produce to you the copy of the agreement in the record, which is Exhibit number 2087. Can you remember who particularly gave you instructions to draught this agreement in this form?

A. Mr. Cartwright, I am not sure that I draughted this agreement. I don't remember having draughted the agreement actually.

Q. Well, I believe you have already identified as Exhibit 2114.1 the portion of draught form of this agreement.

A. No, I have identified my ink notations on it.

Q. Yes, your ink notations on a draught. Would that be correct? Further ink notations on the continuation of the draught being yours?

A. Yes.

Q. And two pages of ink writing, being a draught of this agreement. Would this be correct, sir?

A. Are these the same?

Q. If you would like to compare portions, sir.

A. I would like to. It appears to be the draught of the original agreement.

Q. In your writing?

A. Yes.

Q. Wouldn't you agree with me that you did, in fact, draught this agreement of December 7th, 1959?

A. It would appear so. . . ."

"THE COMMISSIONER: I wonder if I could amplify by you telling us, Mr. Solomon, how you became involved as solicitor for Belli—John Belli and John Belli Operations Limited.

A. It would be through Mr. Morgan.

THE COMMISSIONER: Yes, and what you say is, in the course of Mr. Morgan bringing you into this position, you would not know of any interest he had in John Belli Operations Limited or in assisting Messrs. Belli and Shemilt.

A. No. At one time, according to the minutes of the company, I was aware, I think I was aware according to the records that Mr. Morgan held an interest in John Belli Operations Limited, although the question was can I now remember whether or not at the time this chattel mortgage was signed that Mr. Morgan held an interest, and I would have to correspond the dates on the chattel mortgage probably with the date of the minutes and then come naturally to a conclusion."

Irwin Singer, who drew the agreement of July 2, 1963 and reported upon it to Wagman, said that his instructions came definitely from Shemilt and possibly from Morgan or Wagman. At no time, according to him, did any party to it, or indeed any one else, express the view that its terms were incorrect or not according to the facts.

If justification were needed for exploring events which in scale are insignificant compared to what must be considered, it may be found in the fact that most of the elements which are characteristic in all the transactions of Morgan, Walton and Wagman are present and at an early date. The use of the trust account of Carl Solomon and his various partners and of the Trio account, both for the first time, in concealing the real nature of transactions in which Atlantic money was involved, are of sufficient significance to require attention. It need hardly be said that the absolute control exercised by C. P. Morgan over the affairs of Atlantic and those of Aurora Leasing Corporation was vital to the making of a profit, however modest, by directing loans to a company in which he had a substantial interest.

CHAPTER VII

The London Complex

This chapter deals with the lending activities of Atlantic Acceptance Corporation, Adelaide Acceptance and Aurora Leasing Corporation in connection with the construction and operation of two "shopping plazas" on the southerly outskirts of the Ontario city of London during the period from 1961 to 1965, in the course of which, through incompetence and a determination on the part of those who controlled their affairs to prefer their own interests as individuals to those of the companies concerned, some \$2,500,000 of Atlantic money was irretrievably lost and another half million so jeopardized that the recovery of any substantial portion of it is a matter of doubt. In these operations C. P. Morgan characteristically relied on another young and ambitious lawyer by the name of Donald Walter Reid who practised in London throughout the period and was also, like Carl M. Solomon, called to the bar in the year 1958. Involved in the transactions which are to be related was British Mortgage & Trust Company in a manner and to an extent which can only be explained by the close personal relationship between Morgan and Wilfrid P. Gregory, Q.C., president and managing director of that company, and as a result of which something in the order of \$2,000,000 was risked on doubtful or non-existent security and of which a substantial part must be considered as thrown away. For the painstaking and complicated accounting analysis which was necessary to expose these transactions the Commission is indebted to Mr. Orville W. Parkes, C.A., a London partner of the firm of Clarkson, Gordon & Co., who testified over four consecutive days of hearings beginning on March 24, 1966.¹ His evidence was preceded by the introduction by Mr. Shepherd of abstracts

¹Evidence Volumes 15-8.

of title prepared by the Registrar of Deeds for the County of Middlesex, together with a large number of certified copies of instruments relevant to the inquiry.²

Donald Reid and the Kings

Mr. Parkes' principal task was the analysis of receipts into and disbursements from the trust account of Donald Reid¹ who acted in his capacity as solicitor at one time or another for all the parties involved and, for most of the time, for all of them at once. Among his clients were David Gordon King, a builder, and his father William Arthur Phillips King, formerly in the trucking business, who was associated with his son in a company called Dave King Construction Limited. The solicitors for this company were Messrs. Purcell, Downey, Reid, Mackenzie & Raymond of London, of which Reid, from at least early in 1961, was most closely concerned with its business and other ventures of the Kings. The evidence of William King, who at the time he testified before the Commission was a man of 66 years of age, was that the relationship between him and his son David and Reid was closer than that of solicitor and client and that he regarded Donald Reid almost as a son. At this time the idea of the shopping centre, a complex of retail premises housed in one building with space for the accommodation of motor vehicles in parking areas appurtenant to it, had acquired favour among speculative builders, and indeed provided for the public, in an era of almost universal ownership of automobiles, welcome relief from the congestion of vehicular traffic in the central and traditional shopping districts of most North American cities and towns. To participate in this development, stimulated as it was in the area south of London by the completion of the Macdonald-Cartier Freeway, David King and his father had commenced negotiations with one Charles Cousins for the purchase of several acres of vacant land, being part of the southerly halves of lots 15 and 16 in the Third Concession of the Township of Westminster, for a price of \$60,000 on which they planned to build a shopping centre with the fanciful name of Treasure Island.

Donald Reid, who first testified before the Commission on March 30, 1966,² said that the Kings originally received an offer to purchase these lands from a client of A. E. LePage Limited of Toronto by the name of Mortex for \$420,000, with the provision that Dave King Construction would build a shopping centre on them, but that money was necessary to buy the lands from Cousins in the first place, and that, since he had been doing some collection work for Atlantic Acceptance, he referred the problem to the London branch manager of the company

²Exhibits 1376-1411.

¹Exhibits 1433-7.

²Evidence Volume 18.

which in due course provided the money on the security of a first mortgage and the assignment of benefits under the Mortex offer to purchase. The conveyance from Cousins to William and Dave King was dated March 28 and registered on April 10, 1961,³ and they in turn conveyed to a company of their own called Wildor Holdings Limited. This deed and a mortgage of the lands to Atlantic were not registered until July 11, possibly because the Mortex offer was still under negotiation. It was in fact rescinded for a number of stated reasons, but probably because the intending purchaser had discovered the real price of the land. In any event it is certain that Atlantic provided \$70,000 to Reid in trust as an advance, \$60,000 of which was used to complete the purchase from Cousins. This transaction can no longer be separated from the affairs of another of Reid's clients, one Frederick Charles Adams, proprietor of three retail shops in the London area operated by F. C. Adams Limited.

F. C. Adams and Frederick's Department Store

F. C. Adams had recently returned from a holiday in Florida where he had been fascinated with the operation of stores purporting to sell goods at a discount, relying on a large turnover and a smaller than usual margin of profit to produce their income. The achievements of Mr. Edwin Mirvish of Toronto, operating under the name of "Honest Ed", and other imitators were a matter of record, and discount stores, like shopping centres, were popular if not fashionable. Donald Reid put the requirements of the Kings and the interests of Adams together and with them approached C. P. Morgan in Toronto. The exact chronology of these events is obscure and perhaps unimportant, but when Morgan became aware of the possibilities inherent in the combination of a shopping centre and discount stores he was interested, and testified that Reid's approach to him coincided with interest of his own in the discount store business, perhaps not unconnected with the fact that William L. Walton was secretary-treasurer of Ed Mirvish Enterprises Limited. In any event he determined to talk business with Adams.

Adams was cautious and, in a letter to Reid dated May 31,¹ set down at length his thoughts "regarding our plans and the feeler you think has been put out from Toronto regarding a new chain corporation". Referring to the formation of a company he says: "This would require tremendous assets. For instance for London alone, we would need working capital of at least \$750,000 which I could break down for you. On top of this our covenant would not be good for the landlord. Starting from scratch and on a thing like this that has not been proven, no bank would touch it. I personally, while I think the idea is sound would not gamble my security on it." He goes on to outline the terms on which he was prepared to participate, saying that he

³Exhibit 1378.

¹Exhibit 1412.1.

would require approximately \$137,000 for his interest in F. C. Adams Limited on the assumption that it would be acquired by the new company. He stipulated among other things that he should be president of the new company, and that he should have the right to hire a general manager for \$25,000. In fact he appeared to do even better, as a letter from Reid to Morgan of July 3 indicates, setting out the basis of agreement reached in Toronto between Reid, Morgan and Adams a few days previously. The new company, which had been incorporated in Ontario as a private company by letters patent dated May 16, 1961, was called Frederick's Department Store Limited and was, according to this letter, to pay \$250,000 for the preferred and common stock of F. C. Adams Limited, Adams himself receiving a cheque for \$244,232 as late as November 13 from Frederick's,² and the balance being paid to his wife who held the preferred stock. Adams then subscribed for 112,500 shares of Frederick's, at \$1 per share for 100,000 shares and \$2 per share for 12,500 shares, and lent Frederick's \$100,000 to enable it to complete the transaction. He thus had \$25,000 in cash and was entitled to 112,500 common shares of Frederick's and repayment of \$100,000.

In his letter to Morgan, Reid had enclosed financial statements for F. C. Adams Limited over the previous three years, and it must have therefore been clear to the former early in July that the statement for the year ending December 31, 1960³ exhibited a book value for all the shares of F. C. Adams Limited of \$94,000, including an amount of \$25,000 for goodwill, and a profit of only \$16,500. Nevertheless, Adams was reported by Reid to be talking in terms of sales in excess of \$5,000,000 during the first year of operations for Frederick's, and on July 20, Morgan wrote to Reid⁴ saying that he had "had a good meeting with the investment people, and I have been assured of a nucleus of a deal". He enclosed a letter to him from John Frame & Co., signed by J. A. Brewster, saying that this firm was favourably impressed and thought an underwriting of \$1,400,000 quite feasible. It may be noted in parenthesis that at this time Frame and Brewster were indebted to Commodore Sales Acceptance in the amount of some \$30,000 which was never repaid. Morgan continued with a flourish:

"To start it off I think the company should be incorporated publicly for 1,000,000 shares of N.P.V. not to exceed \$2,000,000 (this can be increased later if need be).

The incorporators should subscribe for 200,000 shares at \$1 to put \$100,000 in the treasury.

A purchase agreement with Adams to take over the stores for \$250,000, payable \$150,000 in cash and 100,000 shares should be entered into. Closing date, say September 15th.

²Exhibit 1429.

³Exhibit 262.

⁴Exhibit 1413.1. (The figure "200,000" represents a handwritten amendment to the typewritten "100,000".)

Of the 100,000 shares you can rely on me for \$75,000, and yourself the balance of \$25,000.

Call 20% payable immediately, and this will put \$20,000 in the treasury for working funds with the balance payable August 15th. Let Barry know if this is agreeable to you and our cheque for \$15,000 will be sent on to you."

Three pages of handwritten notes found in Reid's files and headed "Re Frederick's", which Reid subsequently acknowledged to have been made by him, contained the following memorandum for action made as a result of this communication.⁵

"Issue 3 shares common @ \$1.00 to:

Frederick Charles Adams

Donald Walter Reid

Karen Audrey Bale.

5. Have K. A. Bale resign as a director and pass resolution approving the transfer of her share to C. Powell Morgan.

6. Elect C. Powell Morgan a director.

7. Issue shares as follows:

Frederick Charles Adams 100,000 shares @ \$1.00

Donald Walter Reid 25,000 shares @ \$1.00

C. Powell Morgan (or nominee—see sheet) 75,000 shares @ \$1.00
—in denominations of 10,000 shares per certificate and 5,000 shares per certificate. . . .

9. Issue shares @ \$2.00/share according to subscriptions and pass resolution accordingly."

Frederick's Department Store Limited did have as its first directors the three persons named in Reid's notes, and in the minutes of a meeting of shareholders, dated September 29, 1961, C. P. Morgan was elected a director in place of Mrs. Bale who was Reid's secretary. Supplementary letters patent dated September 28 increased the common shares of the company from the original 40,000 to 500,000, apparently pursuant to a resolution made at a meeting of the board of directors on September 20. A copy of the resolution may be found in the minute book but no record of its enactment, and it may here be said that the minute book of this company and of other companies, for the preparation and maintenance of which Donald Reid charged very large fees, are a travesty of what is to be expected from a solicitor in these circumstances. The actual issue of shares differs from the original conception, as may be seen from Table 35,⁶ setting out the names of the shareholders, the amounts paid by the subscribers for three issues dated October 2, 1961, August 3, 1962 and October 26, 1962 in numbers of shares which were little changed over the years preceding the company's bankruptcy in 1965.

⁵Exhibit 1412.3.

⁶Exhibit 1426.

The largest shareholder on the first issue will be seen to be F. C. Adams with 105,001 shares, his remaining 7,500 shares being divided between his wife D. L. M. Adams and his brother F. M. Adams. Morgan's principal commitment is shown as held by N.G.K. Investments Limited to the number of 61,100 shares for a total consideration of \$77,200. This company, as has been seen, was incorporated in December, 1960 to acquire Mavety Film Delivery Limited from Aurora Leasing Corporation, was financed very largely by that company and by British Mortgage & Trust Company and included among its directors and shareholders, C. P. Morgan, W. P. Gregory and C. G. King. Morgan, in addition, was issued 10,000 shares at \$1 per share, Carman King, 10,000 shares at \$2, Kathleen Christie 10,000 shares at \$2 per share, W. P. Gregory 5,000 at \$2 per share, Harry Wagman 10,000 shares at \$1, W. L. Walton 10,000 at \$1 and 3,000 at \$2 and D. W. Reid 25,001 shares at \$1 and 5,000 shares at \$2. It is noticeable that in this issue only F. C. Adams, C. P. Morgan, N.G.K. Investments Limited for 45,000 of its shares, D. W. Reid, Walton and Wagman were permitted to subscribe at the price of \$1 per share. Reid maintained in his evidence before the Commission on March 30, 1966⁷ that his sole beneficial interest was in the 5,000 shares purchased for \$2 a share, and that the remaining 25,000, other than the one qualifying share which was apparently never paid for, were held by him for William and David King. There were in all, issued to some 46 shareholders, 350,003 shares for a total consideration of \$500,000. Minor acquisitions and transfers occurred on August 3, 1962, and the sole result of the third issue on October 26 of that year was the purchase of 108,414 shares at a price of \$1 by N.G.K. Investments which thus increased its holdings to 169,514 shares for a consideration of \$185,614, making a total investment of \$612,997 for 463,000 shares.

Frederick's started to operate on November 2, 1961 with high hopes for the coming Christmas season, and its promoters contemplated a national chain of discount stores in the immediate future. The company's net profit for that season was \$15,573.53, achieved by the simple but dubious expedient of deferring the cost of 80% of its executives' and buyers' salaries in the amount of approximately \$88,800. But a heavy forfeit was soon to be exacted, for in the thirteen-month period ending January 31, 1963, Frederick's recorded a net loss on operations of \$485,865. Moreover its auditors, Clarkson, Gordon & Co. insisted on writing down the value of its investment in F. C. Adams Limited from \$250,000 to \$88,349, a revaluation which might have been foreseen and was rendered all the more necessary by the fact that this company lost \$17,300 in 1962. Frederick's total loss for the period, including the deferred expenses and allowance for bad debts, amounted to \$720,300.

⁷Evidence Volume 18.

The financial statement, revealing for the first time that the entire equity of the shareholders had been wiped out in the course of little more than a year, was not released until June 14, 1963 and the delay must represent a severe struggle between management and the auditors, finally won by the latter, which resulted in their losing the audit, thereafter entrusted to Wagman, Fruitman & Lando.

Reid and the Adelaide Acceptance Debenture

The increased investment of N.G.K. Investments in October, 1962 appears to be all that transpired from a proposal to issue rights to existing shareholders at \$1 per share forecast in Adams' address to the annual meeting of shareholders held on July 31, attended by seven of them in person, including D. W. Reid, who is shown as holding 30,001 shares, and at which an operating loss of \$200,000 had been projected. All hope of a successful public issue of shares had by this time been abandoned and several economies instituted. On October 26, the day of the second N.G.K. subscription, the directors considered and accepted (C. P. Morgan declaring his interest) an offer by N.G.K. Investments to secure temporary financing in the amount of \$600,000, for which a fee would be payable of \$25,000, and authorized the execution of a debenture in favour of Adelaide Acceptance Limited to secure that sum, repayable April 30, 1964 with interest at 9% per annum and collaterally secured by forty promissory notes, each in the amount of \$15,500.¹ This debenture, which provided for a floating charge on the assets of Frederick's, was registered by Reid in the office of the Clerk of the County Court for the County of Middlesex and not in the Corporate Securities Registration Branch in Toronto, where alone registration could have secured priority for Adelaide Acceptance over other creditors without actual notice. When Reid was examined before the Commission as to why this was done and the security of Adelaide imperilled, he claimed that he was not acting for Adelaide and that the meaningless registration in the County Court office was "in accordance with his practice". From the proceeds of the loan he nevertheless deducted \$3,000 as a fee, the size of which was out of all proportion to any work required to be done for a borrower under these circumstances and can only be justified by work done to secure the position of the lender and on its behalf, chargeable of course to the borrower in any event. There is in evidence a letter from Reid, dated October 31, enclosing the debenture and saying amongst other things: "Please have the Affidavit of Bona Fides taken and return the debenture in duplicate to this office. We will then attend to the registration of the document in the office of the County Court Clerk for the County of Middlesex in accordance with your instructions". On the office copy,² bearing Reid's initials for "Reid and Mc-

¹Exhibit 257.

²Exhibit 1413.3.

Killop", under which style he was now practising, is a handwritten note dated November 2 as follows: "Morgan advised us by phone that his solicitors in Toronto would handle registration (T.O.) after approval. R." Among handwritten notes of Reid's which outline action to be taken in connection with the whole transaction³ occurs the legend: "Debenture in name of Adelaide Acceptance Limited. Ont. Co. H.O. Toronto. Reg'd. in County Clerk office only". Reid insisted that this note supported his contention that he acted in accordance with his instructions, but Morgan in his final testimony to the Commission said that Reid, and no other solicitor, was acting for Adelaide Acceptance in the matter and had charged a substantial fee for what he did. I accept Morgan's evidence in this respect since he had no reason to perjure himself on the point, and largely because it is inherently probable, just as the handwritten note about Morgan's telephone message on the copy of Reid & McKillop's letter of October 31 is inherently improbable, since there was nothing in the body of the letter to suggest that the writer was aware of the requirement to register in the Corporate Securities Registration Branch. Having reached this conclusion, I must also infer that Reid's handwritten note was added to his copy of the letter after he realized years later, and as a result of action taken by the trustee for Adelaide Acceptance, that he was liable for any loss that that company would sustain as an unsecured creditor of Frederick's because of failure to make the proper registration. This unfortunately is not the only example of Reid's readiness to manufacture evidence in exculpation of his own dereliction of duty.

Adams' Report and Resignation

By the end of 1962, Adams had no more stomach for the affairs of Frederick's. In the first week of January, 1963 he prepared a "Report on Operations for 1962", a copy of which was sent to Morgan. Since Adams was the only merchant of the three directors of the company, and in order to appreciate the full measure of the folly which ensued, it is desirable that this report be quoted in full:¹

"As shown by the attached interim Profit and Loss Statement for the year 1962, we will show a total loss of \$357,252.36 before depreciation. Of course the showing may be a little better or worse after an actual physical inventory.

As you already know, at the beginning of 1962 we were organized to proceed with the opening of further stores without delay and, therefore, were carrying far more staff than this one store should have had. This was cut drastically in July, taking full effect in August and has been kept to a minimum since that time.

³Exhibit 1412.4.

¹Exhibit 1430.

THE LONDON COMPLEX

In 1963 we could expect to make the following savings in expenses as compared to 1962:

Salaries	\$ 55,000.00
Legal Audit and Professional Fees	10,000.00
Advertising	20,000.00
Rent	13,555.00
Insurance	4,500.00
	<hr/>
	\$103,055.00

Beginning in October of this year we were hit very hard by the opening of the new Sayvette Store. I estimate that this cut our sales by about 180,000 to 200,000 during the last three months of the year. Therefore, while normally we should expect to decrease 20%, during 1963, because of this new major competitor I really feel we would pick up any decrease we take from this source in the last months of 1963, and come out with sales of about 1,500,000.00, the same as 1962, providing we are properly stocked.

Since mid July, when we made the decision that plans to expand must be dropped and our staff and expenses reduced to absolute minimum, we have cut everything as close as possible and I, therefore, can see no opportunity for any major improvement in this area in 1963. I must, therefore, figure on operating costs in 1963 of about 60,000 a month, or 720,000 for the year, barring any presently unforeseen expenses.

When you figure the following are absolute essentials, that I cannot change, it does not leave much to hire staff and run a store on.

Rent	\$110,000.00
Financial Advice	12,500.00
Interest—9% on \$600,000	54,000.00
Payment to Aurora	83,100.00
Business Taxes	5,634.00
Heat, Light, Water & Phone	26,704.00
	<hr/>
	\$291,938.00

I feel that realistically we cannot figure on better than 30% gross after mark-downs for the year. Therefore, if we can only do 1,500,000.00 volume we can only make 450,000.00 gross. With minimum expenses of 720,000.00 to 750,000.00, we must show a loss of 270,000.00 for the year 1963.

Since there are about 300 shopping days a year, this means that I feel it will actually cost a capital loss of about \$1,000.00 for each day we stay in business.

You asked me to come up with something that could save this business and actually there is no answer I can give that is possible within our financial structure. We are fighting tough competition and are too weak to really compete.

To make a profit this store must do \$3,000,000.00 a year. In order to have any chance of doing this the following would have to take place:

- (1) We would have to have sufficient capital to put from One to One and a quarter million dollars worth of stock in the store, so we could build very strong staple departments and maintain them in complete assortment at all times. Our competitors have this much well assorted stock or more at all times, even now in January they have a beautiful assortment well displayed, while we have nearly bare counters.
- (2) We would need something like 50,000 to 75,000 to develop and upgrade our fixtures so that we could display our new stock as well as they do.
- (3) We would need the balance of the shopping centre finished and opened to attract more customers.
- (4) We would need a system of customer credit so we could advertise, 'Just say charge it', the same as they do, with the first thirty days at no interest. To do this we would have to spend money to train personnel and also to have control forms developed and printed. We would also need a monetary fund of about 100,000.00 to carry it until we could develop bank credit.
- (5) We would have to have enough confidence in the final success of the plan to over spend for a time on advertising and training of department help.
- (6) The extra capital would have to be procured in a manner that did not kill our chances, before we got started, with interest or other charges.
- (7) Our financial affairs would have to be put in order, to the point where we could give information freely to the credit institutions to give firms some confidence in supplying us. At present we find it impossible to deal with much of the market because of rumors and the fact that a supplier can get no sound information on our position.

To do all this, it would be necessary to re-finance our present position and get another million and a half in capital, on common stock or a debenture issue.

Without doing the above I can see no possibility of ourselves developing from our present position to a profitable organization.

Since six weeks after our opening, I have not been in a position to allow the buyers to actually go out and build our departments.

Since I cannot see any possibility of our being able to re-finance our company as outlined above, it only leaves us three choices.

- (1) Have a selling out sale and try to unload and pay off our creditors. This would not work as we could not raise enough money to clear our debts.
- (2) Sell the business on some kind of a stock exchange to a company with a strong enough capital and personnel structure to develop it.
- (3) Declare bankruptcy.

I personally, therefore, can offer no solution, nor can I put myself in the position of carrying on and taking a group of small suppliers down the drain with us. In our present position I do not feel I can justify to myself sending my men out to buy goods I know we cannot pay for.

Maybe if I were not here you could re-organize with a different president in order to save the company or sell it.

I am, therefore, attaching my formal resignation to this report.

Yours truly,

Mr. F. C. Adams."

This was accompanied by a letter of resignation, dated January 10, as president of Frederick's Department Store Limited, F. C. Adams Limited and Frederick's Petroleum Limited, and as a director of all three companies, addressed to the board of Frederick's with a copy to D. W. Reid. Adams' resignation was accepted. Exactly a year before he had been repaid his loan of \$100,000 to Frederick's and he was not permitted to retain the 100,000 shares which represented from the beginning most of the inflated value of F. C. Adams Limited as an asset of Frederick's. In Morgan's phrase, when Adams flung his resignation on the former's desk there were six or seven people waiting outside to see that he was "black-jacked" into giving up these shares, for which no certificate was apparently ever issued in his name and which, according to Reid, Adams simply brought in and left with him in accordance with Morgan's instructions. However this was accomplished, a letter of October 10, 1963 from Reid to Morgan² attached two lists of the shareholders of Frederick's in which Adams is shown as holding only 7,501 shares, the missing 100,000 being recorded as held by "Reid & McKillop in trust". Although the share records indicate that Adams by subscription had been issued 107,501 shares, it may be doubted that he ever thought he was entitled to 100,000 of them.

Further Advance of Atlantic Funds

In the face of these formidable losses Frederick's none the less continued to operate. It had originally borrowed a total of \$500,000 in 1962 from Commodore Sales Acceptance, and \$50,000 from Atlantic Acceptance was lent to F. C. Adams Limited, which in turn lent it to Frederick's while pledging its shares to Atlantic as security. For the half million lent by Commodore Sales Acceptance only notes were given. The \$600,000 obtained from Adelaide Acceptance was used on October 31 to pay off Commodore Sales Acceptance and Atlantic loans and the balance of \$50,000 was paid to Reid & McKillop, who retained \$3,000 as the fee previously referred to and paid the balance of \$47,000 to

²Exhibit 1413.2.

Frederick's. Thereafter, the company borrowed only from Aurora Leasing from which it had already rented its store equipment at a monthly rental of \$6,925, commencing December 1, 1961.¹ Beginning with a loan of \$50,000 on September 16, 1963, the balance in favour of Aurora reached its high point in November, 1964 at \$466,500 and at January 4, 1965 stood at \$366,500 plus arrears of interest, the total indebtedness as at the date of bankruptcy being \$403,879.70. Throughout the period Aurora, through letters signed by W. E. Pahn, sought to collect principal and interest on this debt, interest on the Adelaide debenture, and the N.G.K. Investments finder's fee with one hand, and with the other made additional unsecured advances to Frederick's from which arrears on existing indebtedness were paid. Aurora's commitment did not end there, since it was also financing the purchase of Frederick's shares by N.G.K. Investments.² For the period ending January 31, 1964, Frederick's lost \$331,607.06, leaving the shareholders equity, after wiping out all the contributed capital, in a deficit position of \$422,936.20. Nevertheless on November 13, 1964, Pahn is found writing to Olver, Adams' successor, as follows:

"As per Mr. Morgan's instructions we are forwarding herewith cheque for \$52,500.00 along with 9% demand note for like amount payable to Aurora.

Would you please sign and return the note at your earliest convenience, along with your cheque for \$2,455.08 representing interest due to Aurora as of November 1st, 1964."

At the end of the previous fiscal year Frederick's owed Aurora \$109,000 and, in spite of its disastrous record, the Aurora loans were increased by the end of November, 1964 to \$466,500. No financial statement for the year ending January, 1965 has been found, but Frederick's statement of affairs in bankruptcy, dated July 15, 1965, shows an additional operating loss from February 1, 1964 to that date of approximately \$554,000 and a balance sheet deficiency of \$1,069,000 which, when added to the loss of the capital contributed by the shareholders of Frederick's, becomes a total loss in round figures of \$1,680,000. Aurora's share of its total liabilities of \$1,327,000 was \$403,879 and Adelaide's \$600,000, secured by its inadequately registered debenture. On the assumption that Adelaide ranks as an unsecured creditor, creditors generally may expect to realize 15¢ on the dollar and if, as appears unlikely, Adelaide is found to be secured, no other creditor will receive anything.

Wildor Holdings Limited

The necessity of following in general outline the affairs of Frederick's Department Store has had hitherto the effect of postponing consideration of those of Wildor Holdings Limited over the same period, and

¹Exhibit 1441.

²Exhibit 1246.

its brief history must now be noticed in some detail. It was incorporated by Ontario letters patent dated March 31, 1961 on the application of William and David King and Donald Reid, specifically to hold the lands on which the Treasure Island Shopping Centre was to be built, the undated conveyance of which was registered in the County of Middlesex Registry Office on July 11, the Kings as grantors being described as trustees for the grantee.¹ The building plan for the shopping centre consisted of two phases: the first for a unit for the housing of stores, the second for a recreational centre consisting of bowling alley, curling rink, and restaurant. Dave King Construction Limited was to be the contractor. The first advance from Atlantic Acceptance, when the project was in its infancy and the land virtually untouched, has already been alluded to as has the dilatory registration of the first mortgage from Wildor to Atlantic on July 11 to secure \$150,000,² bearing interest at 1½ % per month. Another mortgage, dated September 12 and registered on September 15, was given by Wildor to Atlantic at the same rate of interest to secure \$250,000 payable on October 1. This was financing of an expensive short-term type, given to a company owning a few acres of vacant land with no contributed capital on the instructions of C. P. Morgan who had other fish to fry in the promotion of Frederick's Department Store, as Wildor's principal tenant at a rental of \$125,000 per year. The problem was to find money for the Kings to cover the expenses of building the first phase of the shopping centre to a point where Frederick's and other tenants could open for business, and Wildor could obtain long-term financing for the completion of the project and the paying off of the interim lenders. It is a familiar problem in the speculative construction business which obviously appealed to Morgan in his chosen role as "secondary banker", apart from the interest which he had in the future of Frederick's. Another shareholder of Frederick's, also interested in interim financing of builders, was W. P. Gregory who had steered his own company, formerly a conservative mortgage lender on existing buildings, into the financing of construction where risks, although high, might be profitable. The mortgage manager of British Mortgage & Trust Company was W. A. Pike, a young man who had joined it upon leaving school and had become the personal assistant and confidant of Gregory's father, Mr. W. H. Gregory, when he had been president of the company, and had risen to the position of mortgage manager in the course of this association. He was also to be a shareholder of Frederick's, and it was to him and W. P. Gregory that Reid applied for further interim financing in contemplation of the necessity of discharging the Atlantic mortgages on October 1.

¹Exhibit 1379.

²Exhibit 1380.

Reid Applies for a Mortgage Loan to British Mortgage & Trust Company

Reid's letter of September 27, 1961, one of the last he was to write as a member of the Purcell firm, is useful as a summary of the situation of Treasure Island as it was at the time, and of the hopes of its promoters for the future.¹

"Dear Mr. Pike:

Further to our recent meeting with you, we are pleased to enclose statement of revenue and expenditures for Wildor Holdings Limited for the first five years commencing in the year 1962. These pro forma statements are drawn in order to reflect the net cash position of the company at the end of each year.

The principal tenants for the shopping centre are as follows:

Frederick's Department Store Limited (triple A)

Busy B Discount Foods Limited, which is a new company, and a wholly owned subsidiary of Loblaw Groceterias Co. Limited. The Loblaw covenant is included in the lease. (triple A)

Bata Shoe Stores Limited (triple A) with the additional covenant of Kent Shoes

Atlantic Acceptance Corporation Limited (triple A)

Clatworthy Lumber Company Limited

Peter Faclaris—restaurant

Reitman's Ladies' Wear

Tip Top Tailors

Hunt's Bake Shop and Candy Store

Barber shop and beauty parlour

Phifer Books and Gifts

Babyland Furniture

Paul Sheffield—jeweller

Maternity Shop

Candy and nut store

Curling Rink

Treasure Island Bowls Limited

In addition to the above leases which have been arranged, negotiations are being finalized for a dry cleaning pick-up store, service station, bank, sporting goods store, and paint store. We will give you the names of these tenants as soon as the leases have been finalized.

The main leases in the shopping centre are for a period of twenty-five years with others for a period of ten years with a five year renewal clause. We have negotiated no leases less than ten years up to this time.

You will note that the rental income shown on the statement of revenue and expenditures increases slightly in 1964. This is due to the

¹Exhibit 1414.1.

fact that certain of the leases have slightly accelerated rents at that time. In addition, you will note that no allowance was made for lighting or maintenance of the parking lot area. In this connection, the tenants are paying 11¢ per square foot for parking lot lighting and maintenance, including snow removal, in addition to the rents shown. We submit that the 11¢ per square foot figure is more than adequate to look after this expense.

All of the leases include an acceleration clause with respect to land taxes. In addition, the rentals shown are minimum rentals only and most of the leases include percentage clauses up to six per cent of gross sales. The department store lease does not have a percentage clause and the supermarket lease has a percentage clause of one and one-half per cent of gross sales or the minimum rental included in the rental income figure shown on the statement.

We should point out to you that the statement of revenue and expenditures has been prepared keeping in mind an interest rate on the first mortgage of seven per cent in the one instance, or seven and one-half per cent in the second instance.

Treasure Island Bowls Limited is a company that will be controlled by the wives of the principals in Wildor Holdings Limited, with only qualifying common shares to be issued, and the balance of the shares to be held by way of preferred shares in the name of Wildor Holdings Limited in order to circumvent The Related Companies Act.² Therefore, Wildor Holdings Limited controls the income from the bowling alley as well as the rental income and a pro forma statement prepared by the Double Diamond Bowling Alley people is enclosed for your information.

The constructions costs of the buildings are estimated to be as follows:

Phase 1

department store and supermarket

80,000 square feet at \$9.00 per square foot\$720,000.00
20,000 square feet at \$14.00 per square foot 280,000.00

Phase 2

90,000 square feet at \$10.00 per square foot 900,000.00

Land improvements including paving, storm sewers, sanitary sewers, fill, gravel, flood lights on lot, stand pipe water storage, pumps, water well, water mains, transformer vault, etcetera—\$250,000.00.

The land is valued by the owners at \$400,000.00 and has been appraised for this figure and set up on the company books accordingly. An Ontario group has offered to purchase the land at a price of \$420,000.00 and this has been refused by the present owners, as they wish to retain ownership of the shopping centre.

Wildor Holdings Limited owns the land at the present time subject to \$240,000.00 temporary financing which was obtained from Atlantic Acceptance Corporation Limited. The first phase of the development

²There was and is no such statute.

is within two weeks of completion and all current accounts have been paid by the developers together with the said funds that have been obtained from Atlantic Acceptance Corporation Limited. Approximately twelve acres of the sixteen acre parking area has been prepared for paving, all underground wiring is completed and the footings for the light standards are in and ready for the erection of the light standards themselves. Three walls of the first phase are completed and most of the roof is on. The terrazzo tile floor has been partially poured and the contractors are continuing their work in spite of a slight delay that was encountered due to a strike of steel workers.

The company would like to arrange mortgage financing in the amount of \$1,800,000.00 to finance the project, and is prepared to give assignments of leases to strengthen the company covenant. We understand from our discussion with you that it would take a few weeks to obtain definite approval of a mortgage loan of this size and, consequently, in the meantime, the developers would consider accepting temporary financing in the amount of \$750,000.00 for a term to be suggested by you as the minimum term for which you would wish to make the loan.

We would be pleased to have you attend in London to inspect the property and the building which is now under construction, and if there is any further information that you require, please do not hesitate to call on us. We might mention that Wildor Holdings Limited banks with The Toronto-Dominion Bank, Main Branch, London, Ontario, and the principals are well known to Mr. Powell Morgan, President of Atlantic Acceptance Corporation Limited. Please feel free to contact either of these institutions for reference.

We will look forward to hearing from you at your early convenience."

Pike's reply of September 29 expresses at least some of the doubts which would have occurred to an officer of a trust company dealing at arm's length with the applicant:³

"Thank you for your letter of September 27th. The details provided are appreciated but there are some questions we would like you to answer for us before we make our decision.

1. Which of the tenants you have listed will have space in Phase 1?
2. How much annual rent will these tenants pay?
3. How much cash are your clients providing, or have they provided for the erection of the buildings and the initial purchase of the land?
4. Where will the cash be secured for the erection of Phase 2?

We were very disturbed after reading the financial statement of Wildor to see that the assets are so small for such a large venture. This leads us to ask for answers to 3 and 4 above.

³Exhibit 1414.2.

Your letter suggests that Frederick's will be a triple A company. Would you please provide statements to prove this?

The writer intends to visit the project within the next two or three days. Answers to the above questions will therefore be appreciated just as soon as possible."

The financial statement that Pike refers to is not the five-year projection of income and expenditures mentioned as an enclosure by Reid but another document prepared by Rafuse, Ford & Keast, accountants in London, undated but prepared as at August 1, 1961, showing current assets of Wildor Holdings as \$24 cash and "sundry receivables of \$1,064". The fixed assets consist of "land at appraised value" of \$400,000, "building under construction at cost" \$65,986.82, "deposit on equipment purchases" \$1,000, and organization expense of \$628.50. The liabilities show accounts payable and outstanding cheques of \$2,660, the loan payable to Atlantic Acceptance in the amount of \$126,016.32 and 4,200 common shares issued at \$340,003. Notes to the statement indicated that the value of the company's land was in accordance with an appraisal by Richardson Real Estate Limited, but failed to comment on this asset not being shown at cost with a separate entry for appraisal surplus. The 4,200 common shares were all the authorized common shares at that time, and the value of \$340,003 attributed to them is mathematically unintelligible, unless the \$340,000 was the appraisal surplus above the actual cost of \$60,000 and the remaining \$3 the value attributed to the shares of William and David King and Donald Reid. It is certain that no money was paid in for any of them.

No reply was ever made to Pike's letter by Reid in the sense of an answer to the questions raised. Pike must have visited the property and resolved his doubts, because on November 1, Reid & McKillop received an advance from British Mortgage & Trust Company for Wildor Holdings of \$499,300, pursuant to a mortgage, dated October 30, to secure \$750,000 with interest at 12% and due November 1, 1962.⁴ This mortgage was not registered on title until November 23. In the meantime, Reid, through his trust account and acting at one and the same time for both the borrower and lender and as trustee for each, disbursed these funds by paying \$50,000 to Wildor Holdings on November 8, and \$309,503.42 to Atlantic Acceptance on November 10, the sum of its advances to date to Wildor Holdings together with accrued interest; on the same day a further payment was made to Wildor Holdings of \$100,000; on November 14, \$5,000 was transferred to the general account of Reid & McKillop; on November 17, \$25,000 was paid to Frederick's Department Store, \$25 to J. E. Farncomb and a further \$5,000 to Wildor Holdings; and on November 21 La Verne Richardson was paid \$3,000 and Ronald Richardson \$1,500, leaving a balance in

⁴Exhibit 1382.

the account of \$271.58. The payment to Frederick's of \$25,000 was characterized as "extras settlement". The payments to La Verne and Ronald Richardson are described on the trust account ledger as "gratuity", the recipients being principals of Richardson Real Estate Limited which, as already noted, was responsible for the appraisal of the Wildor land at \$340,000 above its cost price. Whatever the words "extras settlement" were designed to convey—it is an expression which implies a payment to Dave King Construction Limited in respect of extra work done—the money was used to subscribe for 25,000 shares of Frederick's issued to Reid which he claimed to hold entirely for William and David King. On this transaction he testified to the Commission as follows on March 30, 1966:⁵

"Q. Were you, yourself, a shareholder of Frederick's?

A. Yes.

Q. Just to abbreviate things, did you acquire, apart from the one qualifying share, 25,000 shares at one dollar a share—apart from the one qualifying share did you purchase 25,000 common shares at one dollar per share and 5,000 common shares at two dollars per share?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Were you the absolute owner of the 25,000 shares which you purchased at one dollar?

A. No.

Q. Did you have any beneficial interest as owner in any part of those shares, the 25,000 shares issued at one dollar?

A. No. I had an absolute interest in 5,000 shares at two dollars.

Q. For whom did you hold the 25,000 shares purchased at one dollar?

A. David King, William King.

Q. From what source did you pay \$25,000 into Frederick's to acquire those shares?

A. I don't specifically recall the—

Q. Would it assist you to look at the trust ledger, Mr. Reid?

A. Yes, it would, Mr. Shepherd.

Q. I direct your attention to Exhibit 1433, Section B, a cheque of the 17th of November, 1961, if my memory serves me, and I show you an entry 'To cheque of Frederick's', beside which has been written 'extras settlement', \$25,000. Do you recall that that is the cheque which paid Frederick's for the 25,000 shares?

A. I don't recall specifically, Mr. Shepherd, that that was the cheque.

⁵Evidence Volume 18, pp. 2549-55A.

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Q. Let me show you the cheque. I direct your attention to cheque No. 1025 to Frederick's Department Stores Limited, \$25,000, re British Mortgage. Do you recall what that cheque was paid for?

A. I don't specifically. The thing that is confusing me is the word 'extras' that is written in there.

Q. That is confusing me, too. First, if I could pursue the \$25,000 question. You paid \$25,000 to Frederick's on behalf of Messrs. King, is that correct?

A. Yes.

Q. From what source did you pay it?

A. From Messrs. King; but I can't specifically point to a cheque.

Q. What information do you require or what records would you like to consult to assist the Commission as to the source of that money?

A. The records of Frederick's, I suppose, would undoubtedly reflect the fact that these shares were paid for.

MR. SHEPHERD: May I have Exhibit 1451.

Q. I have some records of Frederick's, Mr. Reid.

A. Yes.

Q. I show you Exhibit 1451, being a deposit slip of the Frederick's Department Store relating to a deposit made by K. A. Bale. Who is K. A. Bale?

A. She was my bookkeeper at the time.

Q. She is depositing \$235,000. A part of it is shown as D. W. Reid, \$25,000, beside which has been pencilled '23'. Do you see that?

A. Yes.

Q. And 23 has been pencilled against F. C. Adams?

A. Yes.

Q. Does that assist you?

A. That shows \$25,000 was paid but what the reference to 23—I am sorry, it is so long ago.

Q. It is all right, Mr. Reid. Look at the records, we have lots of time.

A. Mr. Shepherd, is there any other \$25,000 item shown in any of the trust ledgers?

Q. No, there is not, Mr. Reid; that is the only \$25,000 which is paid into Frederick's from your trust account.

A. Well, but for the notation of 'extras' I would probably assume that that is the thing.

Q. The book I am looking for is apparently still in the library but I put it to you that it is shown on the books of Frederick's as a credit to share subscriptions receivable. Do you recall now that that sum was paid in respect to these shares?

A. The sum of \$25,000 was received by me and was paid from monies received in trust to Frederick's. The only point of confusion that I see is saying to you today that that \$25,000 item you showed to me is the one that was for the purchase of the shares. There is no doubt in my mind I received the monies and there is no doubt in my mind I paid them out as directed.

Q. Did you receive the monies from British Mortgage & Trust in connection with an advance for Wildor Holdings Limited and paid the money out of that fund on the direction of Mr. King to Fredericks?

A. It is quite possible, Mr. Shepherd, yes.

Q. Do you agree that it is so?

A. I can't swear that it is so.

Q. Do you know of any other amount of \$25,000 which you made to Frederick's?

A. No, I don't recall any specific payment of \$25,000.

Q. Do you know of any other source from which Messrs. King would be in a position to or did in fact pay you \$25,000 for this purpose?

A. Messrs. King had certain other assets, sir. I don't know of any specific payment that was made from any other source of funds.

Q. This is a payment out of your trust account?

A. Yes, sir.

Q. Can you assist us as to what you made the payment for?

A. The \$25,000 payment you have pointed out to me?

Q. Yes.

A. No, sir, I can't.

Q. Can you assist us as to who wrote the words 'extras settlement' against that entry?

A. No, sir, I can't.

Q. Is it in your handwriting?

A. No, it doesn't appear to be.

Q. But British Mortgage & Trust were advancing funds, were they not, against construction as it proceeded at the centre?

A. Yes.

Q. And did they come and make inspections, and the like, before advancing?

A. Yes, I assume they did.

Q. I presume they would advance something less than 100 per cent of the value of the construction?

A. I would assume that would be the case.

Q. Did you discuss with Mr. King the propriety of paying out of this mortgage financing funds to purchase for him shares in Frederick's when workmen on the project were unpaid?

A. I don't specifically recall any such discussions.

Q. Where did you consider that the funds would be available to pay the cost of construction, other than from British Mortgage & Trust? Was that the only source of income—of monies that Wildor had?

A. I would think so, Mr. Shepherd."

Reid agreed that disbursing this advance from British Mortgage & Trust Company before registering the mortgage to it was unusual, and thought that it might have been an oversight. But his conduct towards this client was curiously consistent. On November 15 he wrote to the company reporting the deposit of its cheque on November 1, adding "therefore interest should run from that date", saying that he was withholding his report pending receipt of "the discharge of the Atlantic Acceptance Corporation Limited mortgage" and concluding: "We report that all the documents are in order and will be forwarded to you together with our report".⁶ Then on December 11 he reports to the trust company, and to the attention of Pike in the following terms: "We certify that you are the registered owner of a first mortgage identified as follows . . . In our opinion the mortgagor has a good marketable title to the lands described in the said mortgage". A duplicate of the registered mortgage is enclosed, together with other documents, and the mortgagee is advised that releases from Frederick's and Busy B have been assigned to it, construction in connection with "phase two" is well under way and: "Our clients would appreciate a further inspection by you and a further advance of funds under this mortgage". In fact the two mortgages from Wildor Holdings to Atlantic Acceptance had not been discharged, and the chance discovery of this drew the following remonstrance from Pike dated December 27:

"We were very surprised today to be told by a solicitor who searched title this morning that our mortgage on the above property is registered behind one to Wildor Holdings and another to Atlantic Acceptance. We are quite sure that there is some reasonable explanation but it does seem peculiar that you certified to us in your letter of December 11th that we hold a first mortgage and later we find out that it is a third mortgage."

To this Reid opposed a front of brass and on the next day replied:

"We report that we had no hesitation in certifying title in this matter to you since we paid off the two prior mortgages registered in favour of Atlantic Acceptance Corporation Limited before advancing funds under your mortgage. There was some delay in receiving the executed discharges from Atlantic's solicitors in Toronto, however, we did not hesi-

⁶Exhibit 1445.

tate to certify title to you in our letter of December 11th, 1961, because we, in fact, paid Atlantic Acceptance Corporation Limited all moneys owing to it under the said mortgages. We trust that this clarifies the situation for you.”

Apparently it did, because British Mortgage proceeded to give a discharge of its existing mortgage from Wildor and to take a new one, dated February 2, 1962, to secure \$1,500,000, bearing interest at 11% per annum and due February 28, 1963, which was registered on February 9,⁷ and to double its advances to Wildor Holdings to an aggregate amount of \$1,200,000 before the discharges of the latter's mortgages to Atlantic Acceptance, dated January 25, 1962, were finally registered on February 14, and not until an additional \$165,000 had been advanced by Atlantic and repaid out of moneys advanced by British Mortgage & Trust Company, with accrued interest of \$4,000, on February 8.

Reid's Evidence of the Payment to W. A. Pike

The examination of Reid's trust account, in so far as it concerned Wildor Holdings, disclosed a payment of \$5,000 on February 15, 1962 to “K. A. Bale” out of funds provided by British Mortgage & Trust, for which no explanation had been found by Mr. Parkes and which Mr. Shepherd thought he should pursue in his examination of Reid. The result, although not entirely unexpected, produced a sensation out of all proportion to the financial importance of the transaction, and cast light on the motives of the principal actors to such an extent that the circumstances must be carefully considered. Counsel returned to the matter immediately, following that part of his examination of Reid already quoted, and it should be said that the latter was represented by counsel in the person of Mr. John Sopinka of Toronto, who had at the beginning of the examination made a general objection to disclosing what he considered to be privileged communications between his client and the Kings, and had been advised by me to make specific objection as the examination proceeded.¹

“Q. Well, on that same exhibit, 1433, Mr. Reid, if you would look at section B, page 2, the bottom entry, 15th of February, 1962, cheque to K. A. Bale, cash. Do you see that entry?

A. Yes.

Q. Do you see that entry?

A. Yes.

Q. 15 February, K. A. Bale, cash, \$5,000?

A. Yes, sir.

⁷Exhibit 1384.

¹Evidence Volume 18, pp. 2555B-9A.

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Q. Is it Mrs. Bale?

A. Yes.

Q. Did Mrs. Bale take a cheque drawn on the trust account and cash it?

A. Yes.

Q. And what did she do with the cash?

A. She gave the cash to me and I, in turn, gave it to one of the Kings, and I don't know which one. Is there a copy of the cheque here, Mr. Shepherd?

Q. Yes. If you will look, it is cheque 1117. It is at the very top of one of the pages.

A. Yes.

Q. Have you got it there?

A. Yes. And it is noted, 'To obtain cash re Wildor direction'.

Q. It is, 'British Mortgage, to obtain cash re Wildor direction'?

A. Yes.

Q. Do you recall which King you gave it to?

A. No, sir.

Q. Did you obtain a receipt for it?

A. I don't know, sir.

Q. Do you have any receipt in your possession, so far as you are aware at this time?

A. No.

Q. On whose instructions did you make the payment to?

A. Well, it would be on Wildor Holdings Limited, according to the notation on the cheque. I don't know which officers of Wildor or whether it would be both.

Q. Did you discuss with Mr. King what he was going to do with \$5,000 in cash?

MR. SOPINKA: Mr. Commissioner, this is one stage I would take the position he was obviously obtaining instructions from a client and unless there is a ruling that the privilege does not apply I would object to the question.

MR. SHEPHERD: It would be my respectful view, Mr. Commissioner, that such a communication is not a communication made for obtaining professional advice. The leading case is *Minter v. Priest*, wherein the protection accorded to communications between solicitor and client is looked at only from the point of view of communications passing from the client to the solicitor solely for the purposes of obtaining professional advice or the communication passing from the solicitor to the

client in giving such advice. For an officer of a client to come to a solicitor's office and obtain from a trust account standing in the name of the company of which such man is officer the sum of \$5,000 in cash is not, in my respectful submission, a communication falling within the rule.

It would be my view, and I do respectfully submit, that what Mr. King, whichever Mr. King it was, told Mr. Reid he wanted that \$5,000 for is not a communication for the purposes of obtaining professional advice, particularly not with respect to the funds of Wildor. It does not fall within the rule and I respectfully submit the witness should be directed to answer it.

THE COMMISSIONER: Have you anything to say in reply to that, Mr. Sopinka? I think Mr. Shepherd has correctly stated the substance of the view stated in *Minter v. Priest*, which was a judgment of the House of Lords, I think in 1930.

MR. SOPINKA: That is certainly the holding in that case. I have read the case, Mr. Commissioner. If it is so held that the solicitor and client privilege does not apply we will have to answer the question.

THE COMMISSIONER: I so rule and ask Mr. Reid to answer.

THE WITNESS: Repeat the question, Mr. Shepherd, please?

MR. SHEPHERD: Did Mr. King, whichever Mr. King it was you gave the money, inform you as to purpose he required \$5,000 in cash out of the trust account of Wildor?

A. I was informed the cash would be handed to Mr. William Pike.

Q. Can you identify Mr. Pike for us?

A. Mr. Pike was an employee of British Mortgage & Trust. I do not know the purpose for the payment.

Q. Mr. Pike was the mortgage manager, was he not, of British Mortgage & Trust?

A. Yes.

Q. Did you pursue at all with Mr. King for what reason Mr. Pike would be getting \$5,000 in cash from the trust account of a borrower from British Mortgage?

A. I don't recall a specific discussion, Mr. Shepherd.

Q. I wonder if you could search your recollection, Mr. Reid, and assist us as to which King this was? Did you normally deal with the father or the son?

A. They were both in and out of the office many times a day, Mr. Shepherd, and I really don't recall.

Q. Did you ever have any further discussion with Mr. Pike, for example?

A. No.

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Q. Whereby it appeared whether or not he had in fact received the money? When did you first hear that this money was required? When in relation to the day you paid it out?

A. Probably on the day that I paid it out. I don't specifically recall, other than Mrs. Bale was contacted in the last day or so in connection with this and she called me and I returned her call. She indicated she had been questioned about it and her recollection was that she went to the bank before three o'clock and got this money on my instructions and sometime later that afternoon the monies were delivered. . . ."

Mrs. Bale had evidently called Reid on the telephone after being interviewed by one of the Commission's investigators and, after these circumstances had been clarified, the examination continued:²

"Q. But back at that time, back in 1962, from whom did you first hear, for the first time, that \$5,000 in cash was required?

A. From someone in an executive position in Wildor Holdings.

Q. Was it a King?

A. Yes.

Q. Do you recall whether the conversation first took place in your office?

A. No, I don't, Mr. Shepherd.

Q. Did you ever advert to the matter again in conversation with anybody?

A. I don't recall any specific discussions about it.

Q. Did you ever think it proper to inform Mr. Gregory, the President of the Company, that it was your understanding that such a payment had been made?

A. No, sir.

Q. You never did, in fact, inform him?

A. No, sir.

Mr. Shepherd, I do not for a moment suggest that the payment was improper. I do not know.

Q. I appreciate you have said you do not know for what purpose it was paid. I think you have also said you cannot suggest any reason from your knowledge of Wildor as to why William Pike would be receiving \$5,000 from that company. Is that correct?

A. Yes."

Further Evidence from David King

David King, who was called as a witness on the following day, recalled a meeting in Reid's office in which Reid had said that the payment of \$5,000 to Pike was necessary in order to obtain the next advance

²Evidence Volume 18, pp. 2559C-D.

at a time when advances from British Mortgage & Trust had been slowing down. Reid, he said, had pointed out that the building was half finished, that money was needed and that the payment to Pike had to be made. Subsequently Reid informed him that Pike "had been taken care of" and that an advance of about \$200,000 was then forthcoming. An advance of exactly \$200,000 was in fact paid to Reid & McKillop on February 23, 1962, raising the total amount to \$1,400,000. But in the course of this evidence David King was much more specific about another payment of \$5,000 to Pike, in connection with an advance received from the trust company for the construction of the King Shopping Plaza on Hamilton Road, an enterprise of the King family not connected with Atlantic Acceptance or any of its subsidiary companies. His evidence as to this referred to the payment out of Reid's trust account recorded on a ledger sheet entitled "British Mortgage & Trust Company loan to King, William A. re Hamilton Road Shopping Plaza", and showing a cheque to William A. King in the amount of \$5,000 negotiated on September 6, 1962. He said that Reid telephoned, saying that Pike was in his office and David King and his father were to come down. Reid told them upon arrival that he had an advance on their mortgage which he would like to pay out to them, and that Pike was building a house and would like \$5,000 to enable him to finish it. Thereupon Reid made a cheque payable to William King who took it downstairs to a neighbouring branch of the Toronto-Dominion Bank in temporary quarters, and returned with five \$1,000 bills. Reid expostulated about the size of the bills on the ground that they could be traced, so William King returned to the bank, brought up smaller bills and invited Reid to count them. He did so and handed them to Pike, whereupon the Kings were told to return the following day to get their advance, and withdrew, leaving Pike and Reid together in the office.

Bribes Admitted by Pike in Evidence

Pike appeared before the Commission on April 4, 1966 and was represented by counsel. He gave a circumstantial account and it should be quoted:¹

"Q. When an application for a substantial mortgage secured by commercial property came in, did it come to you first?

A. Almost always.

Q. And then what did you do with it?

A. I would take it to the managing director and—

Q. Is that Mr. Wilfrid Gregory?

¹Evidence Volume 21, pp. 2925-32.

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A. Yes, Mr. Gregory. And then it would be presented to the Board of Directors and later to a committee of the Board of Directors when the special committee to deal with the weekly business was set up.

Q. Were you required to make any preliminary investigations of the matter?

A. If the application came from our Toronto branch, usually all the investigation had been done. Anything which originated in the Stratford area we would investigate from the Stratford office.

Q. Did you have any discretion as to what you sent on to the executive committee or did you send on all applications to the executive committee?

A. No, not all applications. Some were turned down by myself.

Q. When you did send them on to the executive committee was it any part of your duty to make any recommendation?

A. No. I was never asked for a recommendation except that I think it was considered that once it had gone across my desk, well, it would not go farther than my desk unless it did bear my recommendation.

Q. Do you recall Wildor Holdings Limited borrowing money from British Mortgage & Trust secured by a mortgage on a shopping centre in London known as Treasure Island?

A. Yes.

Q. Did you personally receive any money from Wildor Holdings Limited in respect of that mortgage?

A. Yes, sir.

Q. How much did you receive?

A. A total of \$10,000.

Q. Did you receive these funds in cash or by cheque?

A. In cash.

Q. In how many payments did you receive the funds?

A. In two.

Q. Were they equal payments?

A. Yes.

Q. \$5,000 each?

A. Yes.

Q. How did this arrangement come to pass? What was the first conversation or correspondence which related to you receiving money?

A. I am not sure exactly when it happened but Mr. Reid came to my office, and when I say I am not sure it is because I don't know whether it was when we had the mortgage of \$750,000 or when that mortgage

was increased to \$1,500,000, and Mr. Reid indicated that \$10,000 could be made available if the application could be approved.

Q. When you say your office, Mr. Pike, where was your office at that time?

A. At that time it was at 10 Albert Street, Stratford.

Q. Is that a different place from where the British Mortgage office is now?

A. Yes, the new building is at 1 Ontario Street.

Q. How did the subject come up?

A. Mr. Reid broached the subject to me.

Q. And what was it again, please?

A. That if the application—and this I think is the one that increases the mortgage—if that application could be approved, that the money could be made available to me.

Q. What was your reply to that?

A. I accepted.

Q. Did you inform any of the officers of British Mortgage & Trust of that arrangement?

A. No, I did not.

Q. Then when was the first payment, to which you have referred, in fact, made?

A. It was made in February, 1962.

Q. And who paid you?

A. I believe it was the senior Mr. King.

Q. Where was this payment made?

A. Stratford.

Q. Where in Stratford?

A. I believe it was in our office on Albert Street.

Q. What conversation took place on that occasion?

A. I don't honestly recall any conversation.

Q. Were you paid in cash?

A. Yes.

Q. Do you recall anything about the size of the bills or anything at all about the payment?

A. No, I don't, except that I imagine they were in \$20 or maybe \$50 denominations.

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Q. Did Mr. King come by prior arrangement? That is to say, did you expect him on that day?

A. I don't know, sir. I would imagine that I would expect him to come.

Q. You don't recall whether there was any discussion with anyone about whether or not he would come on that particular day?

A. No, sir, I don't recall this.

Q. When was the second payment made?

A. In September of the same year.

Q. Where was that made?

A. That was made in Mr. Reid's office in London.

Q. Who was present on that occasion?

A. Mr. King and his son and Mr. Reid and myself.

Q. What were you doing in London on that day?

A. I was inspecting the Treasure Island Gardens building at the time.

Q. Did you meet with Messrs. King and Mr. Reid for this purpose by prior arrangement?

A. I don't know whether it was by prior arrangement except that I do know that when I went to London that day that Mr. Reid knew that I would be there and that I would be calling at this office.

Q. When you got there who was present?

A. I believe it was just Mr. Reid and later we were joined by the two Mr. Kings.

Q. What happened after the two Mr. Kings came?

A. Mr. Reid, I have forgotten whether he or one of his girls wrote a cheque which was signed to Mr. King and Mr. King Senior went downstairs and cashed it and came back to the office and gave an envelope to Mr. Reid who opened it and indicated that the thousand dollar bills should not be given and so Mr. King returned to the bank and came back again with another envelope.

Q. Do you recall how many thousand dollar bills there were?

A. I saw one. I don't know how many there were.

Q. Had you ever seen a thousand dollar bill before?

A. No, sir.

Q. Was there any discussion about a thousand dollar bill?

A. No, just that as it was drawn from the envelope, that it shouldn't be passed out.

Q. Then when Mr. King returned what did he have?

A. He had a white envelope which he, I believe, gave to Mr. Reid.

Q. You have said that Mr. King went away?

A. Both the Kings left the office shortly after this.

Q. I am referring now to the occasion when Mr. King came back and he had one thousand dollar bill at least, and you said he went away and then did he return again after that?

A. Yes. He took that envelope and went away and came back and gave an envelope to Mr. Reid.

Q. And then what was done with the money?

A. I believe the money was counted at the time, replaced in the envelope, and before I left I received the envelope.

Q. Do you recall the size of the bills after Mr. King had made the change?

A. I think once again that they were in denominations of \$50 and less, maybe \$100.

Q. Who left the office first, the Messrs. King or yourself?

A. The Kings.

Q. Who gave you the money?

A. Mr. Reid gave it to me.

Q. Were the Kings still there when he gave you the money?

A. No, sir.

Q. Did you keep all the money for yourself or did you share the money with anyone?

A. No. It was all mine. I kept it all myself.

Q. Did anyone else at all, apart from your own solicitor in recent days, did anyone else at all other than the two Mr. Kings and Mr. Reid and yourself know of this arrangement at any time?

A. Not to my knowledge, sir.

Q. Have we dealt with this matter adequately, Mr. Pike, or is there any other observation you would like to make or any other evidence you wish to give touching the matters we have dealt with?

A. No, I think it has been covered fairly and thoroughly."

Mr. Sopinka, again appearing for Reid, thereupon applied to examine the witness, and since the consequences of this testimony were bound to be serious for his client, I permitted him to do so, Mr. Shepherd making no objection. His questions were mainly directed towards establishing that the second payment of \$5,000 was made in respect of the King Shopping Plaza and not of the Treasure Island Centre, but Pike adhered to his statement that it was the second instalment of a promised payment of \$10,000. A former alderman of the City of Stratford and senior officer of the Canadian Junior Chamber of Commerce, Pike gave

his evidence with complete candour, and was in due course convicted on two counts of taking a bribe as an agent under section 368(1)(a)(ii) of the Criminal Code by Magistrate D. B. Menzies on May 18, 1966 at London, sentenced to two months' imprisonment and fined \$1,000.

Reid Re-examined: His Counsel Cross-examines the Kings

Reid was recalled immediately following this evidence and claimed the protection of section 5 of the Canada Evidence Act and section 9 of the Evidence Act (Ontario), subject to which he was directed to answer counsel's questions. Mr. Sopinka again asserted the privilege attaching to communications between the Kings and Reid in the matter of the second payment arising from a meeting, alleged by Reid to have been held on August 24, 1962, in which the propriety of bribing Pike was discussed, and at which, according to Reid, he had produced the Criminal Code and warned the Kings against such a course.

I have no hesitation in describing this evidence as a fabrication since it was based upon purported entries in Reid's diary which was said to be available but was not produced, and because, if Reid had in fact gone to the trouble of advising the Kings on this question of criminal law, he would not have participated in the meeting of September 6 when the actual bribe was given. In any event no privilege can attach to a communication between solicitor and client made in furtherance of fraud or crime, and the witness was directed to answer further questions. Reid denied "emphatically" Pike's account of the approach made in Stratford. He admitted drawing a cheque for \$5,000 on his trust account from moneys of British Mortgage & Trust deposited therein for the benefit of King Shopping Plaza and handing it to William King who then returned with the cash, and that, after a discussion between the Kings and Pike with respect to the denominations of the bills involved, William King had again left the office and returned. He believed that the purpose of the payment was to facilitate the making of advances under the mortgage to British Mortgage & Trust Company. Immediately thereafter William King was called to testify, and he denied giving any money to Pike on either of the two occasions in question, but asserted that Reid had raised the subject many times. He recalled the circumstances under which Karen Bale had been given a cheque for \$5,000 by Reid, and admitted going to Pike's office in Stratford to fetch or deliver papers at Reid's request on several occasions. As to the second payment on September 6, he described in detail his two trips to the bank, the first to obtain five \$1,000 bills and the second to have them reduced to smaller denominations. He said further that Reid counted the money "bill by bill" and handed it to Pike. In response to questions put by Mr. Sopinka he admitted that he might have delivered an envelope to Pike on one of his visits to Stratford, but said he was not aware of its contents. At the

conclusion of this evidence Mr. Sopinka applied to postpone his examination of David King to enable him to examine the evidence already given and make suitable preparation, and to this I agreed. The examination took place before the Commission on April 25, 1966 and was principally directed to the payments to Pike.¹ David King denied, as had his father, having received any warning from Reid in relation to the provisions of the Criminal Code and otherwise corroborated his father's evidence in general outline. It is unnecessary to pursue the details of this evidence further since Reid was tried and convicted by His Honour Judge B. J. S. MacDonald on July 14, 1967 under section 368 (1)(a) (i) of the Criminal Code on two counts of bribing an agent, and was sentenced to 12 months' imprisonment and to pay a fine of \$5,000. His appeal to the Court of Appeal was dismissed in the following year and leave to appeal further was denied by the Supreme Court of Canada.

Financial Difficulties of Wildor Holdings

By April 9, 1962 the British Mortgage & Trust mortgage of \$1,500,000 was fully advanced and it appeared that permanent financing in the amount of \$1,800,000 by Coronation Investment Company Limited, repayable over a period of twenty years, was in prospect on completion of the Treasure Island centre. Although the latter loan was agreed to, to the point of an executed commitment of both Coronation and Wildor, it never materialized, probably because of non-completion of the shopping centre owing to a strike and a fire, and perhaps because of the fact that British Mortgage & Trust had an assignment of leases from Wildor Holdings, also required by Coronation, and was not likely in the near future to forego its only means of repayment. On September 13, Pike wrote to Reid & McKillop, expressing regret that British Mortgage & Trust Company could not see its way to increasing its investment and stating that the initial commitment was made "with some small amount of reluctance as this was considerably more than we have ever loaned in the past". He referred to the fire which had resulted in the loss of valuable tenants, and, in particular, to the establishment of another discount store at a neighbouring site which might be expected to have a detrimental effect on Treasure Island.¹ This, no doubt, was the Sayvette operation in premises owned by South London Corporation Limited which was to play an important part in the later stages of Atlantic's investment in this area.

The time to test Reid's resourcefulness was at hand. The building operations of Dave King Construction, although apparently diligently pursued, had been hampered by its lack of resources and its complete dependence upon advances to Wildor Holdings. Revenue from the shopping centre leases was being collected by the mortgagee for the

¹Evidence Volume 24.

¹Exhibit 1414.6.

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repayment of interest and the property was encumbered by mechanics' liens to the extent of over \$300,000. Moreover A. E. LePage Limited had brought an action against Wildor Holdings which had been settled by the latter giving a second mortgage to the plaintiff for \$60,000. In a private and confidential letter to Morgan on September 14 Reid wrote as follows:²

"Dear Powell:

Re: Wildor Holdings Limited

We were informed by Fred Adams that you would like to be furnished with details of Wildor Holdings Limited and that there is a certain amount of interest on your part of purchasing the company.

We should point out to you that the writer has no further personal interest in this company, and we have accordingly contacted Messrs. King and have been furnished with a one year statement of revenue and expenditures, a copy of which is enclosed for your information. We are informed that the asking price for the finished shopping centre is \$2,400,000.

We suggest that a meeting either in Toronto or in London be arranged between you and the Kings to discuss this matter further.

As a personal note, the writer regrets that he has not seen you for some time to discuss the various businesses in which we have common interests, however, you will appreciate that there has been a very difficult health problem that we are attempting to overcome. We trust that we will be able to get together with you in the not too distant future. We send our kindest personal regards."

The lienholders obtained judgment for \$311,496.35 on October 22. It was not until January 29, 1963 that Reid wrote another private and confidential letter, this time to W. P. Gregory, in the following terms:³

"We understand from our discussions with Mr. C. P. Morgan that the sale of Treasure Island Shopping Centre could be carried out by British Mortgage & Trust Company exercising its Power of sale as contained in clause three, page three of the mortgage.

Messrs. Clarkson Gordon & Co., Chartered Accountants, have audited the books of Dave King Construction Limited and Wildor Holdings Limited on behalf of the lien holders and execution creditors, and have found the books to be in order. Mr. John Robinson, a resident partner in the Clarkson Gordon & Co. firm, has indicated to Mr. King that the lien holders and execution creditors have pretty well abandoned hope of recovering any of the monies owing to them in connection with this shopping centre, and that in all probability they will be delighted to accept a settlement of ten cents on the dollar.

In view of this, we suggest that if you are in agreement, Mr. Robinson be notified by you that British Mortgage & Trust Company has decided to sell the property by private sale under its Power of Sale con-

²Exhibit 1412.6.

³Exhibit 1414.8.

tained in its mortgage and that the best obtainable offer is in the amount of \$1,700,000.00. The purchase monies would be applied firstly to satisfy the indebtedness to British Mortgage & Trust Company and the balance would be available for distribution among the lien holders.

The mortgage registered in favour of A. E. LePage Limited does not present an immediate problem as it is not in default at this time and in addition it contains a covenant to postpone in favour of a new first mortgage.

We understand that Mr. Morgan has discussed in detail with you the plans for the shopping centre and we feel that it is imperative for us to act in this matter immediately in order to best protect the interests of your Company, Atlantic Acceptance Corporation Limited, and the shareholders of Frederick's. We will, therefore, appreciate your co-operation in this matter.

We attempted to contact you by telephone today to discuss this matter with you, however, we were unable to reach you. If you feel that a telephone discussion would be of value please do not hesitate to call the writer. We will look forward to hearing from you and in the meantime we send you our kindest personal regards."

The statement that Clarkson, Gordon & Co. had found the books of Dave King Construction Limited and Wildor Holdings Limited to be in order referred to a report made to the creditors of Treasure Island Shopping Centre on January 4 which, after advising them that the firm had not been allowed to inspect Reid's trust ledgers referring to the two companies, estimated the realizable value of their consolidated assets from the creditors' point of view at \$4,133.76. Mr. Parkes, who signed the report, concluded as follows: "British Mortgage & Trust Company will under no condition advance sufficient funds to complete phase two of the shopping centre. The mortgage company has reconsidered its plans to foreclose and now indicate that they will act under a forced sale clause in their mortgage and apply to the Court for power to sell the shopping centre with any excess proceeds being turned over to the Court to be distributed to the second mortgage holder and the lien creditors". An application to the Court was not, of course, necessary, but it is interesting to observe what in fact happened in purported compliance with the recognized procedure.

British Mortgage & Trust Exercises its Power of Sale

At a meeting of the board of directors of British Mortgage & Trust company on February 26, 1963 the problem of Treasure Island Shopping Centre was considered and the following minute records the board's decision:¹

"The mortgage is now overdue and there are substantial arrears of interest. For some time we have been collecting rents from Frederick's

¹Exhibit 109.

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Department Store and Busy B Groceteria which amounts have been applied on account of arrears. Sale proceedings have been instituted by our solicitors and offers will be accepted after March 4, 1963. At present our investment plus interest and miscellaneous disbursements is in the neighbourhood of \$1,670,000.00 and will increase slightly before a sale could be effected. Two valuation reports have been ordered and while they have not yet been received, verbal reports would indicate that they will be in the range of \$1,500,000-\$1,600,000.

It was moved by Mr. A. B. Manson, seconded by Dr. H. B. Kenner that after due consideration this Board of Directors set the reserve bid on this property for the purposes of sale at \$1,700,000.00."

One month later to the day the board considered three tenders, the first mentioned being from Zema Development Limited in the amount of \$1,200,000 with an accompanying letter increasing the offer to \$1,450,000, the next from A. E. LePage Limited, as trustees for a company to be incorporated, for \$1,655,200 and a third from Donald Walter Reid as trustee for a company to be incorporated in the amount of \$1,801,000. Of these offers the first was not accepted since it was the lowest received, the second was not considered acceptable because of conditions attached to it and the third was accepted in the following terms, as appears from the minute: "Authorize the managing director to accept the offer of Donald Walter Reid, as trustee, subject to negotiation of terms of payment and particularly the mortgage we would take back. It was pointed out that British Mortgage cannot take back a mortgage of \$1,500,000, this amount being in excess of two-thirds of value." Next day Pike wrote to Reid & McKillop, to the attention of Donald W. Reid in the following terms:²

"The Offer you were good enough to make on behalf of your clients for the purchase of the above property was considered along with two others at the meeting of our Investment Committee yesterday. Your Offer was the highest.

It is noted that a condition of your Offer is that British Mortgage take back a first mortgage of \$1,500,000. It did not occur to the writer when you visited our office early this week that a mortgage of \$1,500,000. of the Offer you submitted would be an illegal investment. As you know we are not permitted to lend more than 66⅔ % of the value. There is no doubt that the purchase price will indicate the value.

The maximum first mortgage we would be able to consider would be \$1,100,000.

In view of this you may want to reconsider the purchase price and submit a new Offer. If you do so I hope you will be able to send a cheque for 10% of the purchase price and try to make arrangements to complete the sale as of April 1st so that you will get credit for rents due that day.

²Exhibit 1416.2.

If you think you could complete the purchase with a mortgage of \$1,100,000. I would recommend that you get another Offer to us before the end of this week. I realize this is asking for pretty fast work but it is imperative that this matter be settled at once.”

Reid accordingly made a second offer to purchase for a total of \$1,700,000, as originally contemplated, and the deal was closed; a conveyance under power of sale was made by British Mortgage & Trust to a company by the name of Treasure Island Properties Limited, dated April 26 and registered on April 30, 1963.

Several aspects of this transaction must be considered. Reid admitted that these offers had been discussed with the British Mortgage people at Stratford, but was careful to say that only the current position of the loan and the minimum amount which the trust company would accept had been dealt with. Wilfrid Gregory, in evidence given to the Commission on April 27, 1967, said that he knew both Morgan and Reid were interested in purchasing the shopping centre and that he was glad of this because disposal had become a problem, but that all the discussions with Reid had taken place with Pike and that he was not aware of the terms of Reid's offers until they were received.³ Morgan testified that he had discussed with both Reid and Gregory the desirability of acquiring Treasure Island for the shareholders of Frederick's in March of 1963, and said that the first offer to British Mortgage & Trust of \$1,801,000, with the expectation of a mortgage back of \$1,500,000, was based on the fact that he considered \$300,000 all that Atlantic should invest, the second offer being reduced to \$1,700,000 in the hope that he would not “have to come up with the money”.⁴ Reid's notes, always informative,⁵ show the original figure of \$1,700,000 crossed out and supplanted by the figure of \$1,801,000; by their juxtaposition with other notes, dealing with the planning of an addition to the Treasure Island Centre to provide for a hockey arena on lands at the northeast corner of the original Wildor property still owned by Cousins, they appear to have been made in the month of March before the first offer was made to British Mortgage & Trust. Reid's second offer of \$1,700,000 involved the giving back of a mortgage to British Mortgage & Trust for \$1,100,000, or two-thirds of the valuation of \$1,700,000 to comply with the provisions of the Loan and Trust Corporations Act, and a balancing figure after adjustments of \$588,498.83, set down in handwritten notes in the trust company's files opposite the legend “figure phoned to Mr. Morgan by W. Pike on April 24/63 - 2.30 p.m.”

³Evidence Volume 116.

⁴Evidence Volume 25.

⁵Exhibit 1417.1.

Treasure Island Properties Lease to Treasure Island Gardens

Treasure Island Properties Limited was incorporated as a private company by letters patent in Ontario on April 26, 1963. The applicants for incorporation were Elizabeth Crisp, Carl Morton Solomon and Irwin Singer and the signatures on their application were witnessed by D. W. Reid in each case. Like Wildor Holdings, its issued capital stock amounted to three one-dollar shares which were apparently never paid for, but were transferred in January 1964 to John L. Menzies, an associate of Reid in the practice of law, Roy Bonnie, the last manager of Frederick's, and E. B. Bishop, the manager of the hockey arena, Menzies' share being eventually in April 1965 endorsed in blank. To this company Aurora Leasing Corporation advanced on April 29, through Reid & McKillop, the sum of \$650,000 for which it received a second mortgage on the Wildor lands to secure \$800,000 at an interest rate of 10% per annum, dated April 25 and registered on April 30, the whole amount to be due and payable on April 30, 1964.¹ The interest rate of 10% must be considered unusual in the face of the 11% rate charged on the first mortgage, as also the total amount secured under the two mortgages, which was in the aggregate \$1,900,000, in view of the fact that the British Mortgage & Trust evaluation of the land and buildings was, as has been seen, somewhat less than \$1,700,000.

The descriptions of the lands contained in these two instruments are confusing, but it is reasonably clear that Aurora's mortgage was only intended to cover the original lands on which the shopping centre stood, and which were appurtenant to it, as conveyed to Wildor Holdings. British Mortgage & Trust's security included, or was intended to include the additional parcel amounting to 1.88 acres which has been referred to above. Reid's notes² show that, at the time of writing, the method by which this parcel was to be conveyed from Charles Cousins was still in doubt, as the word "nominee?" below a rough sketch of the property indicates. In due course he selected his sister-in-law, Mrs. Julia E. Faust, to purchase this wedge-shaped landlocked parcel, which lay athwart the site of the proposed hockey arena, from Cousins for \$6,000 on April 23, and to convey it to Treasure Island Properties for \$100,000 four days later, both instruments being registered on April 30. On the same day as this remarkable transaction, which will be referred to again, notice of a lease³ between Treasure Island Properties Limited and another company, named Treasure Island Gardens Limited, was registered, announcing that such a lease of the 1.88 acres had been executed and some additional lands, amounting in all to fractionally more than two acres. No contemporary copy of this lease has ever been found, although Reid testified to his belief that one had once been in his files. What does exist is one

¹Exhibit 1396.

²Exhibit 1417.1.

³Exhibit 1393.

in which the date April 29 has been typed in, and at the end of which, over the space reserved for execution, has been pasted a piece of paper headed as follows, "In witness thereof the parties of the First and Second Part have hereunto fixed their Corporate Seals duly attested by the hands of their authorized signing officers in that behalf this fourteenth day of December A.D. 1965 to replace the original Indenture of Lease dated the 29th day of April A.D. 1963 which cannot be found," and subscribed to by R. L. Bonnie and E. B. Bishop as president and vice-president of both companies.⁴ By the terms of this document Treasure Island Properties purports to lease to Treasure Island Gardens Limited a private Ontario company similarly incorporated on April 26, 1963 with three common shares, issued at \$1 each and unpaid, the said parcel of slightly over two acres for a period of 99 years at an annual rental of \$40,000. Should the rental payments under this lease of what, at the end of April 1963, was vacant land be in arrears for a period of over ten days, the landlord was entitled to re-enter and repossess it. Thereupon Treasure Island Gardens mortgaged its leasehold interest, defeasible as it was on these precarious terms, to Atlantic Acceptance for \$500,000 for a period of one year from April 29 with interest at 10%, and by September 16 this loan had been fully advanced, commencing with a payment of \$100,000 to Reid & McKillop on the day of execution of the mortgage.

The End of Wildor Holdings

Before pursuing the history of the Treasure Island complex, now committed to embrace a hockey arena, something further must be said about the demise of Wildor Holdings Limited. The files of the Department of the Provincial Secretary indicate that Donald Reid took care to advise it, in a letter of June 16, 1962, that he had resigned as a director in favour of Robert John King, but the company never filed any returns under the Corporations Information Act or paid any filing fees, and Reid advised the department in November 1963 that it was out of business.¹ For its default in this respect its charter was cancelled on January 21, 1965. It was asserted by David King that Reid's resignation was to enable his firm to act for the Kings against the holders of liens registered against the Wildor lands. Statements as to the financial affairs of Wildor were frequently promised by Reid but never forthcoming. The books of account of Wildor appeared one day in the construction office of Dave King Construction, all the ledgers being filled out in the same hand and in the same coloured ink and apparently at the same time, the Commission's information being that this was done by the accountant Keast overnight at the request of Reid. Reid denied that he had in his possession the Wildor minute book or other corporate records, but, subsequent

⁴Exhibit 1394.

¹Exhibit 447.

to his giving this evidence to the Commission, he produced in his office unbound minutes to the Provincial Police. These can only be described as fragmentary, and, together with some handwritten notes made by Keast, were introduced by the Crown as evidence in Reid's trial on June 14, 1967. The accountant's notes, which he said were dictated to him over the telephone by Reid, give specific numbers of share certificates from 4 to 21, dividing up 4,197 common shares of Wildor Holdings equally among Reid and the two Kings. Reid maintained both before the Commission and at his trial that he had originally decided to take a one-third interest in Wildor Holdings in lieu of legal fees, had decided against it in the summer of 1961 and had "divested himself" of this interest, continuing to hold one share in trust which the minutes show was eventually transferred to Robert John King. All of this is perhaps of little importance except as it bears upon the \$25,000 of Wildor's money advanced by British Mortgage & Trust which was used to purchase 25,000 shares of Frederick's Department Store in the name of Donald Walter Reid on October 2, 1961. Reid's version of this transaction has already been quoted and the Kings maintained that these shares represented a joint interest on the part of Reid and themselves. Morgan at all times believed that the 25,000 shares were Reid's in accordance with the original agreement with Reid and Adams as to the initial investment in Frederick's, saying that he would not have consented to the landlords having any share interest in the latter company.² The Wildor books of account set this up as a loan to W. A. P. King and eventually to Dave King Construction Limited. As late as 1965 David King is to be found pressing Reid for the division of these shares and the delivery to him and his father of certificates representing the one-third share of each of them. By this time the Kings had become nuisances. On April 8, 1965 David King wrote to Reid a letter drafted by Purcell, the latter's former partner, in the following terms:³

"PERSONAL AND CONFIDENTIAL

Mr. Donald W. Reid,
Barrister & Solicitor,
365 Richmond Street,
LONDON, Ontario.

Dear Sir:

I have been unable to reach you by telephone for the last three weeks; consequently forcing me to write this letter.

As you know you hold in trust equally for my father, W. A. King, myself and yourself (25,000 shares at \$1.00 each and 5,000 shares at \$2.00 each) a total of \$35,000.00 worth of shares of Fredericks Department Store Limited.

²Evidence Volume 25.

³Exhibit 1875.

My father and I have never received written trust acknowledgment but you verbally stated that you hold the shares in trust as above set out and your statement was made in the presence of Mr. Morgan, Mr. Wagman and Mr. Purcell and at that time you also stated that you would see that my father and I would get our certificates. I would like you to give me immediate acknowledgment of the trust and I would like you to have the share certificates split three ways and have my father's shares and my own delivered to us.

I would appreciate the trust acknowledgment by return mail on or before April 15, 1965 and the shares as soon as they can be transferred.

Yours truly,
Dave King"

To this he received the following reply:⁴

"We acknowledge receipt of your letter of April 8th, 1965. The information contained therein is not correct.

Yours truly,
REID, MENZIES and CREIGHTON
Per "D. W. Reid" "

Thereafter King tried unavailingly to get Reid on the telephone and eventually told the latter's receptionist that, if he did not hear from Reid immediately, he would take steps to compel delivery of his shares. This produced the following letter from Reid, dated May 12:⁵

"WITHOUT PREJUDICE

Mr. Dave King,
74 Hunt Club Drive,
London, Ontario.

Dear Sir:

We understand that you telephoned our offices today making some sort of threat and acting in a very rude manner. Please refrain from any such telephone calls in the future.

We have refused to discuss anything with you until all of our outstanding accounts have been paid in full. You were advised of the fact that we are exercising a solicitor's lien on any and all documents relating to any of your business which may be held in this office. We have every intention of adhering to this position.

Your conduct and belligerent attitude have been mysteries to the writer for some time. Every effort was made to help you, and you apparently have no conception of the services rendered to you by the writer. You do not appear to be the least bit embarrassed, so we can only conclude that for some reason you have chosen to blame other people for the unpleasant experiences you have had in the past few years. Even though we are quite aware of the fact that you do not

⁴Exhibit 1876.

⁵Exhibit 1877.

appreciate what was done for you, we must, in all fairness to ourselves, point out to you that you have at all times been treated with competence and courtesy, and it is with regret that we have observed the deterioration of our relationship with you, but you have really left us with no alternative because of your behaviour.

The writer is quite pressed for time these days, and since our time is at a premium and must be productive, we cannot afford to discuss your affairs with you. If you have some specific grievance with the writer, we suggest that you look after your old accounts and we could probably arrange to speak with you, provided that your attitude is one of amiable courtesy, as ours would be in any such meeting. We suggest that you reflect carefully on facts, forget about making threats, and make your approach to us in the aforesaid manner.

We will not render an account for this advice.

Yours truly,
REID and ASSOCIATES
Per 'D. W. Reid' "

Reid had already taken somewhat over \$22,000 in fees from Wildor Holdings alone and the alleged arrears amounted to some \$300. The least that must be said about this letter is that it is indeed a remarkable one for a solicitor to write under any circumstances, but particularly as a trustee which he now claims to have been.

Marco Holdings' Profit of \$9,400 and the Loan to Frederick's

From Aurora's advance of \$650,000 to Treasure Island Properties Reid & McKillop paid the balance owing to British Mortgage & Trust Company with \$50,000 in hand, and Treasure Island Gardens lent the first advance of \$100,000 from Atlantic on the mortgage of its interest as lessee from Treasure Island Properties of the Faust property to Treasure Island Properties to pay Julia Faust. Mrs. Faust, needless to say, was unaware of the significance of her rôle which, as far as she was concerned, amounted to the signing of certain papers put before her by her brother-in-law. The \$6,000 paid to Cousins for the 1.88 acres was supplied by a payment of \$3,000 from a person never identified, and \$3,000 plus disbursements from the office account of Reid & McKillop. The beneficiary of Mrs. Faust's activities was a company called Marco Holdings Limited, incorporated in Ontario as a private company in January 1962 on the application of Reid, F. C. Adams and Karen Bale. The company's minute book, for what it may be worth, indicates that Adams was replaced as a director by C. P. Morgan on June 21, 1963. The name of the company suggests that it might have been originally intended as an investment vehicle for Morgan, Adams and Reid. Reid testified that Morgan's beneficial interest was recognized some time before the only recorded meeting of the directors of the company on June 21, 1963, and the shareholders' register shows Adams' one share as cancelled, appar-

ently in 1962. The only issue of shares recorded, other than shares to qualify directors, was that of 2,000 to Morgan and 2,000 to Reid on December 3, 1963, and the only other meeting of which minutes were kept is an annual general meeting of shareholders on that date, showing as present Reid, Elizabeth Foster, a stenographer in his office, and C. Powell Morgan. A consent for the holding of the meeting incorporated in the minutes is signed by Reid and Foster but not by Morgan, and it is reasonably certain that he did not attend it, if indeed it was ever held.¹ Morgan's evidence is to the effect that, at the time when arrangements were being made for the construction of the hockey arena in the spring of 1963, Reid advised him that he was a partner in Marco Holdings over the telephone, but that he had never seen any of the shares which he was supposed to hold and continued: "As a matter of fact one of Mr. Reid's traits with regard to all of the companies that he has anything to do with is that people who are beneficially the owners of the shares never get them. This happened with Wildor, this happened with South Wellington, this has happened with Marco, this has happened in half a dozen of the companies. So the only reason that I was supposed to be a beneficial owner of it was over the telephone that he said that I am now a partner."²

In any event Atlantic's first advance of \$100,000 made on Morgan's instructions to Treasure Island Gardens was used to purchase the hockey arena land from Mrs. Faust, through Reid's trust account for Treasure Island Properties, being evidently treated as a loan to that company from Treasure Island Gardens, and Reid had \$94,000 in hand which was held by him in trust for Marco Holdings. With the knowledge and approval of Morgan, as the evidence makes plain, he advanced \$85,000 of this money as a loan to Frederick's Department Store Limited, but instead of advancing the whole amount at once, as Morgan understood would be the case, he waited until the middle of May to advance \$50,000 and the middle of the following July to advance the balance in the amount of \$34,650, having deducted \$350 from the second payment as his fee. These advances were secured by two promissory notes due on November 7, 1963, bearing interest at the rate of 10% per annum payable monthly. Between July 8, 1963 and August 13, 1964 \$7,915.63 was paid on six occasions, first of all to Reid & McKillop in trust and subsequently in 1964 to Reid & Associates.³ There is no record of this loan being made or authorized in the minutes of either Marco Holdings or Frederick's Department Store, Reid being an officer and director of both companies, but on March 9, 1964 Reid wrote a letter to Harry Wagman, in care of Aurora Leasing Corporation, in the following terms:⁴

"We are pleased to enclose Promissory Note in the amount of Eighty Five Thousand Dollars (\$85,000.00) in favour of N.G.K. Investments

¹Exhibit 466.

²Evidence Volume 25.

³Exhibit 1461.

⁴Exhibit 1462.

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Limited. This amount was loaned by N.G.K. Investments Limited to Frederick's Department Store Limited.

The funds were obtained on the sale of certain real estate which was purchased in trust for N.G.K. Investments Limited located at the Treasure Island Shopping Centre in the Township of Westminster in the County of Middlesex and Province of Ontario. The cost price to the Trustee for N.G.K. Investments Limited was \$6,000.00 and the property was subsequently sold for \$100,000.00. After deducting closing costs, legal fees and disbursements in connection with the transaction, the sum of \$85,000.00 remained and this was loaned to Frederick's Department Store Limited as evidenced by the Promissory Note enclosed.

The writer sends you his best personal regards and we look forward to seeing you in the near future."

The accompanying note, dated February 1, 1964, was executed by Frederick's Department Store Limited "per D. W. Reid, Secretary Treasurer", undertaking to pay on February 1, 1965 the sum of \$85,000 and interest in the meantime monthly at the rate of 10%. No specific reply to this letter has been discovered, but a memorandum in Reid's hand addressed to Sidney Chusid, dated June 2, 1964, was found in Wagman's office, reading as follows:⁵

- "1. Trust agreement N.G.K.: Marco.
2. Note—Frederick's to N.G.K.—\$85,000.
3. Interest statement paid by Frederick's to Marco: Marco's account.
4. Statement—White Oaks:—ledger cards.
5. Trust agreement—Reid and Frederick's—Conveyance dated Jan. 31/64.

(Re: White Oaks purchase).

Please check with Harry to see if anything else is required and determine whether or not he has the promissory note. Thanks.

R."

N.G.K. Investments' "Loan" to Frederick's

Other than the records prepared by Reid in his possession, there is no contemporary evidence of the loan to Frederick's ever being identified with N.G.K. Investments. In addition to the documents already referred to was the trust account ledger for Marco Holdings on which someone had written in pencil "N.G.K.?", and a bill on the letterhead of Reid & McKillop addressed to "Marco Holdings Limited Trustee re N.G.K. London, Ontario" and reading, "To professional services re transfer of property South London Corporation, our fee herein: \$9,500.00" signed by D. J. McKillop. The account is dated December 30, 1963 and it is at least true that \$9,000 of the \$94,000 held in trust for Julia Faust as trustee for Marco Holdings was transferred to the general account of Reid & McKillop, merged in the \$12,000 odd in fees which Reid at

⁵Exhibit 1463.

different times charged this company. None of the interest paid by Frederick's found its way to N.G.K. Investments, but was paid out either to the general account of Reid & McKillop or to government agencies in payment of various charges against Marco Holdings. The company had no books of account and there is nothing in those of N.G.K. Investments indicating an asset in the form of a loan to Frederick's of \$85,000. There is no doubt that Reid was visibly upset when, on his examination in the bankruptcy of N.G.K. Investments, the note from Frederick's to the latter company, which he had prepared, was produced to him. His dilemma was well illustrated in the searching examination before the Commission by Mr. Shepherd on this point of which the following is a sample:¹

"Q. Let me say this, you say that Mrs. Faust purchased the land for \$6,000. It was sold to Treasure Island Properties for a hundred thousand dollars, and the difference in price went into a trust account in your office headed 'Marco Holdings Limited', but that at least subsequently you were instructed to hold those funds for N.G.K. Investments; is that correct?

A. Yes.

Q. And Mr. Morgan—

A. I was instructed to have the promissory note executed in favour of N.G.K.

Q. Mr. Morgan instructed you to keep all the interest which would be paid under the loan?

A. He authorized it, sir.

Q. And you did keep all the interest paid under the loan pursuant to Mr. Morgan's instructions; is that correct?

A. Yes. I believe there was additional income as well, Mr. Shepherd, for Marco.

Q. Yes. We will come to that. I'd just like to deal with this Marco Holdings transaction. Now, did you report to N.G.K. Investments Limited at any time the amounts of money received by you and taken in payment of fees which you had charged to Marco?

A. No.

Q. Did you report to anybody at all in writing respecting this transaction?

A. Certainly the statement of account would be rendered to Marco, Mr. Shepherd.

Q. You were the President and principal officer of Marco?

A. Yes.

Q. Apart from Marco were there any other—

A. From my records possibly you will find specific accounts were rendered to Marco Holdings for services.

¹Evidence Volume 18, pp. 2606-12.

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Q. And, for a period of time, this \$85,000 was, so far as you were aware, an asset of N.G.K. Investments Limited; is that correct?

A. Yes.

Q. Did you tell Mr. Gregory that N.G.K. Investments Limited held a note for \$85,000 payable by Frederick's?

A. I don't recall any discussion with Mr. Gregory about this.

Q. Did you tell any of the Directors at all of N.G.K. Investments Limited that they had an asset that arose out of the sale of the land in the amount of \$85,000?

A. Mr. Shepherd, I do not know who the directors of N.G.K. are.

Q. Did you tell anybody at all, other than Mr. Morgan, or later to Mr. Wagman, that N.G.K. Investments Limited had an asset of \$85,000 arising out of the sale of that land?

A. Yes, I discussed it with my auditor, because I was concerned with the whole transaction.

Q. And when were you told that N.G.K. Investments was not supposed to have the property—the asset?

A. Some time after the promissory note to N.G.K. was delivered, Mr. Shepherd.

Q. What reason was assigned?

A. No reason I can recall.

Q. Who told you this?

A. Either Mr. Morgan or Mr. Wagman. I do not know.

Q. Then, for whom were you holding the money?

A. Then for Marco Holdings, I suppose, Mr. Shepherd.

Q. We are back to Marco Holdings?

A. At that time Marco Holdings wrote it off the books. I simply did not know what to do with it.

Q. Marco Holdings wrote it off their books?

A. Yes, I had a meeting with my auditors when it came to my attention.

Q. Told you to write it off?

A. Yes. I told them Marco Holdings had an asset I did not consider an asset at the time of the preparation of the financial statement. Now, it appears that the company I thought who owned this doesn't. Now, it is reflected as Marco Holdings. What should be done about it?

Q. How is it reflected as Marco Holdings, Marco Holdings didn't have any books of account?

A. No, but Marco Holdings had a promissory note originally, and N.G.K. had a promissory note, and the note to Marco was set aside.

Q. We are quite clear that N.G.K. first came on the scene in the Spring of 1964. For whom was that money being held in April, 1963?

A. Mr. Shepherd, I could only tell you what has transpired as far as the records indicate. I have already indicated to you that after I received instructions to execute a promissory note, or refer to the asset as being held for another particular company I would consider that to be done and done proper.

Q. Did you consider it proper—it was your word, Mr. Reid—did you consider it proper to cause Mrs. Faust to purchase land for \$6,000., sell it to your client, Treasure Island Properties Limited, for \$100,000., and pay the difference into a trust account for a company in which you were a principal? Did you not have misgivings about the propriety of that action?

A. No, I did not, because I at all times considered this to be part of the whole. It appeared to me that the desired result was being achieved. The desired result was in this particular instance that additional monies were being put into Frederick's. And I wasn't the least bit interested in benefiting from this personally, from the sale of this land, and I am still not.

Q. The money in fact originated with Atlantic, being loaned under an Atlantic loan of \$500,000.?

A. I understand that is the case, Mr. Shepherd, I haven't specific recollection.

Q. If it was desired to put money into Frederick's, and nothing more, why didn't Atlantic loan the money to Frederick's?

A. I do not know.

Q. Did you make enquiries about that? Did you ask Mr. Morgan why he wanted to do it that way?

A. The financing of the whole arrangement, other than the arranging of permanent financing, and I attempted very strenuously to arrange permanent financing, these decisions were Mr. Morgan's decisions.

Q. When you were told that N.G.K. wasn't to have this asset, did you make any effort to get the note back?

A. I was informed that it was destroyed, Mr. Shepherd.

Q. Who told you that?

A. A telephone conversation.

Q. With whom?

A. I can't specifically say whether it was—I recall making an enquiry about it, and I am under the impression now it was destroyed. I don't recall with whom I was talking, but it would be Mr. Wagman or Mr. Morgan. But at this point I don't know."

Reid and Morgan as Partners

Morgan said in his evidence to the Commission that he was aware of the Julia Faust transaction, had regarded the valuation of arena land as "a pretty stiff mark-up", although eventually justified by a later loan of British Mortgage & Trust Company which will be referred to, and, when asked about the existence of the second note in favour of N.G.K. Investments signed by Reid, replied: "My own opinion is it was just manufactured out of fright. I think he just attempted to get himself off the hook with regard to the collection of their eight or nine thousand dollars worth of interest that came to Marco Holdings, which never got to Marco Holdings incidentally, it was just siphoned off in his trust account. And in addition the difference between the \$85,000 and the \$94,000, which was again another \$9,000, that also was siphoned off in his trust account." The examination of Morgan on this point continues as follows:¹

Q. Was Marco Holdings intended to be a profit for anyone for borrowing that 94 thousand?

A. No, that was supposed to be a profit of Marco, a doubtful one for the simple reason that \$85,000 of it was to go to Frederick's, and that would have eliminated that profit, and it would have ended up where the land value was valued at \$100,000, Frederick's would have been, shall we say, 85 thousand better off.

Q. In the unlikely event that Frederick's had been able to re-finance so that the \$85,000 note could be repaid, who was to receive the benefit of the \$85,000?

A. Well that I don't know. If what Mr. Reid said, that I was supposed to be his partner in the deal would have meant that I would have received it. But I point out—

Q. You would have received how much?

A. Well, 50 per cent, supposedly on a two-way deal.

Q. Who would have received the other 50 per cent?

A. Mr. Reid."

One of Reid's main interests at this time was the business of sound reproduction, and he had made connections in New York with a company called Eastern Sound to which Atlantic Acceptance advanced money by lending it directly to Reid who, in turn, re-loaned it at a somewhat higher rate of interest to Eastern Sound, Marco Holdings getting the benefit of this profit. From this connection Morgan developed Manhattan Sound Corporation to which large sums of Atlantic money were lent. Out of the Eastern Sound transaction Marco made a profit of \$5,462.50 by the end of 1962 and, early in the following year, Reid

¹Evidence Volume 25, pp. 3365-6.

purchased for Marco, on Morgan's suggestion through Barrett, Goodfellow & Company, 1,000 shares of Commodore Business Machines (Canada) Limited for \$4,250. From the profit made on the Faust purchase \$4,950 was paid into Reid's savings account from his trust account to enable him to purchase a debenture of a concern called Sarlon, which he declared to the Commission was held in trust for Marco Holdings, leaving unexplained the use of his personal savings account.² In short, when the trust account for Marco Holdings was flattened out in August 1964 the excess of receipts over disbursements had gone, with the exception of the \$85,000 loaned to Frederick's but including the interest thereon, either to Reid personally or to his firm, and the only disbursement made to C. P. Morgan was \$400 on January 3, 1963. For his supposed one-half interest in Marco Holdings Morgan in fact received nothing else; indeed the records of the company as to his participation are in a state of confusion. Although the issue of 2,000 shares to Reid and 2,000 shares to Morgan purportedly took place at a special general meeting of shareholders on December 3, 1963 (not the annual meeting above referred to) the financial statements used for income tax purposes for the year ending October 31, 1964 show only three common shares issued at \$1 each. The annual return of the company as at March 31, 1964 filed under the provisions of the Corporations Information Act in June of that year shows only two directors, Reid and Mrs. Foster, although the minute book records Morgan's appointment as a director on June 21, 1963. This was corrected by the filing of amended returns in September 1964, but the company's auditors and the income tax authorities apparently never knew, and in the case of the former probably because at that time the relevant minutes did not exist.

By the end of April 1963, with plans afoot to build the hockey arena as a northerly projection of Treasure Island Shopping Centre, the cost of all the Treasure Island lands, measured in terms of the purchases from British Mortgage & Trust Company and Julia Faust by Treasure Island Properties, was \$1,800,000. Advanced to the latter immediately on April 30 was \$1,100,000 from British Mortgage & Trust and \$650,000 from Aurora Leasing, secured by first and second mortgages, and \$100,000 deriving from the mortgage of its tenuous and undocumented leasehold interest to Atlantic Acceptance, making a total of \$1,850,000 or \$50,000 in excess of the fully inflated purchase price of the land. Eventually, as the Aurora mortgage from Treasure Island Properties for \$800,000 and the Atlantic mortgage from Treasure Island Gardens for \$500,000 were fully advanced, the amount of the total investment reached \$2,400,000 of which \$1,300,000 derived originally or ultimately from Atlantic. It was, as has been seen, maintained by Reid and Morgan that the purpose of this top-heavy investment was to protect the shareholders of Frederick's Department Store, which alone of all the companies had solicited through

²Exhibit 1464.

its principals participation by members of the public, in spite of its status as a private company, enabling them to acquire ownership of the Treasure Island Centre in due course. In the meantime steps were taken to establish the *de facto* ownership of Treasure Island Properties by C. P. Morgan, Harry Wagman and D. W. Reid. Mr. Parkes found in the books of Treasure Island Properties an account headed "Loan Payable" in the amount of \$9,000, identified as being payable to these three individuals and set up by a journal entry dated May 31, 1964, this date having been changed apparently from one of April 30. The journal entry can only be explained by a series of handwritten notes found in the office of Harry Wagman,³ based on a series of transactions made through the trust account of Reid & McKillop. One of the Reid & McKillop trust ledgers was entitled "Treasure Island Properties Limited Share Agreement". No such agreement was ever found, but on June 28, 1963 the account is credited with the sum of \$3,000 from an unknown source, and another \$3,000 from the Julia Faust trust account previously referred to, as having been left over from funds supplied to Treasure Island Gardens by Atlantic, and thence by way of constructive loan to Treasure Island Properties. The transfer of the \$6,000 accumulated by these entries is then made to a trust account headed "Treasure Island Properties Limited" on October 8, 1963, accompanied by a notation: "Shares of Morgan and Wagman". The journal entry records this \$6,000 plus an additional \$3,000, not specifically identified but apparently segregated from the moneys available to Treasure Island Properties from the Aurora loan, to establish the loan from Morgan, Wagman and Reid in the amount of \$9,000. The additional \$3,000 cannot be accounted for by any receipt of Treasure Island Properties, or disbursement on its behalf, recorded in the Reid & McKillop trust account, but must be derived from some item of expense recorded in the Treasure Island Properties journal entry. One such which requires examination is for "realty taxes" in the amount of \$18,407.50. Disbursements from the solicitor's trust account indicate that \$15,000 was transferred in respect of fees of Reid & McKillop and \$3,407.50 recorded as a payment to the Registrar of Deeds, this latter amount being exactly the \$3,400 required to pay the land transfer tax on a consideration of \$1,700,000, plus the \$7.50 required to register a deed. Realty taxes of \$18,407.50 paid by Treasure Island Properties would be an expense deductible from income for tax purposes, but the payment of legal fees for the acquisition of the capital asset would not. The journal entry, which purports to reconcile receipts and disbursements of approximately \$174,460, provides under the entry "maintenance (arrear)" an item of \$4,063 attributable to the month of April, 1963. If \$3,000 of it had been paid out by Reid it would explain his share of the recorded loan. Nothing has been found in the accounts of Treasure Island Properties, or in any other accounting record, to justify this assumption, although

³Exhibit 1467-8.

Reid, when examined for discovery in the bankruptcy of Aurora Leasing Corporation, claimed that he, Morgan and Wagman each contributed \$3,000 to the funds of Treasure Island Properties when it bought the shopping centre from British Mortgage & Trust.⁴

British Mortgage & Trust's "Atlantic Note"

Before exploring further the plans of Morgan, Wagman and Reid to save the day for the shareholders of Frederick's it is convenient to describe the next approach to British Mortgage & Trust Company. A letter dated July 9, 1964, handwritten and signed by C. Powell Morgan, is addressed to the trust company in the following terms:¹

"We are desirous of laying off with you a receivable maturing October 15, 1964 of \$750,000, yielding 8½%. We would be prepared to give you Treasure Island Gardens Limited note endorsed by ourselves for this amount and we will hold the first mortgage as our collateral, acknowledging your beneficial interest, until it is paid through a public offering to be made in early fall. If this can be done we would like it to be consummated at your early convenience."

This elicited a reply from W. P. Gregory on July 10 as follows:²

"Dear Powell:

We have your letter of July 9th for which we thank you. We will be pleased to supply you with \$750,000 to be in your hands on July 15th.

We regret that the security you suggest is not completely adequate because of the regulations under which we operate. We suggest the following:

1. Note from Treasure Island to Atlantic endorsed by Atlantic to us;
2. Assignment of first mortgage from Atlantic to British Mortgage & Trust Company.

It will be satisfactory if you have your solicitors prepare this assignment of the mortgage and simply send it along to us with the note. We will not require any further legal technicalities at this time."

Morgan was not deterred by Gregory's stipulations and having thus secured three-quarters of a million dollars, as it were by the stroke of a pen from his private office, he proceeded to lay the foundation for the security of British Mortgage & Trust. The transaction is interesting because of the light it throws upon the ingenuity of Morgan and the lightheartedness of Gregory. Treasure Island Gardens was permitted to offer and Atlantic Acceptance to accept a "leasehold mortgage amending agreement"³, dated July 16, 1964, to secure an additional \$250,000

⁴Exhibit 3684.

¹Exhibit 1471.

²Exhibit 1472.

³Exhibit 1397.

over and above the \$500,000 already advanced under the mortgage of its leasehold interest in the hockey arena property, due on October 15, 1964 instead of April 29 at an interest rate reduced from 10% to 8½%. Atlantic thereupon executed on the same day an assignment of this mortgage as amended to secure \$750,000 owing and unpaid to British Mortgage & Trust, and Aurora Leasing, now threatening to bedevil the situation because of the muddled descriptions of the lands involved which gave it, as part of its security in its mortgage from Treasure Island Properties, a portion of the arena lands, executed an agreement postponing its mortgage in respect of this overlapping parcel to that of the mortgage assigned. All of these instruments were registered on July 20. Atlantic Acceptance recorded the receipt of \$750,000 from British Mortgage & Trust, applied \$500,000 thereof, plus some \$6,000 in respect of accrued interest, to the reduction of the loan made to Treasure Island Gardens, and paid the balance of \$243,841.23 to Aurora Leasing which in turn applied that amount to reduce the indebtedness to it of Treasure Island Properties. Since there had been no additional advance to Treasure Island Gardens, the effect of this exchange was to reduce the indebtedness of Treasure Island Gardens to Treasure Island Properties, at this time very substantial in respect of rental payments and advances made for the construction of the arena recorded on July 15, one day before the documents of title were executed and five days before they were registered. British Mortgage & Trust's security now included the obligation to pay \$40,000 a year to Treasure Island Properties for 99 years, should it find itself, by foreclosure, in the shoes of Treasure Island Gardens.

On July 21 a lengthy letter⁴ reporting on this transaction and enclosing documents went to British Mortgage & Trust Company, addressed to the attention of "Mr. W. Gregory" and marked to indicate the dispatch of copies to C. P. Morgan and Harry Wagman. That it was no ordinary reporting letter would appear from the fact that it was sent registered mail and by special delivery. It purported to enclose the original promissory note from Treasure Island Gardens to Atlantic Acceptance and the assignment and guarantee of the note by the latter in favour of the trust company. Duplicate copies of registered instruments executed on July 16 were also enclosed, and the writer, J. L. Menzies, who signed for Reid, Menzies & Creighton, the current style of Reid's firm, was at pains to describe the agreement by Aurora Leasing Corporation postponing its mortgage from Treasure Island Properties in relation to that portion of the arena lands which had been mortgaged to it. On the following day W. P. Gregory replied as follows:⁵

"Thank you for your letter of July 21st, reporting on this matter in a most complete fashion. I acknowledge receipt of the documents which are listed in your letter."

⁴Exhibit 1473.

⁵Exhibit 1474.

A duplicate copy of the lease from Treasure Island Properties to Treasure Island Gardens, on which in part the security of British Mortgage & Trust depended, was not, however, enclosed, doubtless for the reason that no executed copy existed, nor were the Commission's investigators able to find the original promissory note from Treasure Island Gardens to Atlantic. On October 23 of the same year Walter Pahn, writing to Stratford, this time on behalf of Treasure Island Gardens, asked for information for the latter company's auditors as to particulars of "our \$750,000 mortgage with British Mortgage & Trust, principal \$750,000, interest 10% per annum" to which the company replied, "We have your letter of October 23 and wish to advise that we do not have a mortgage on Treasure Island Gardens Limited. Perhaps you have confused us with another company."⁶ One explanation for this failure to identify the assignment of mortgage by the assignee itself is provided by the fact that the trust company, in its annual return as at October 31, 1964 made to the Registrar of Loan and Trust Corporations,⁷ shows a note for \$750,000 in a schedule of guaranteed short-term notes, listing it as one from Atlantic Acceptance Corporation at 8½% with both a book value and market value of \$750,000. A search of the records of Atlantic Acceptance produced no record of such a debt, although there has been found a letter dated October 22, 1964 and signed by J. D. Gordon, the assistant treasurer of British Mortgage & Trust, offering to renew the loan of \$750,000 "against the security of a mortgage of Treasure Island Gardens matured October 15, 1964"⁸. In the margin appear the letters "O.K."

W. P. Gregory's Knowledge of the Aurora Loan to Treasure Island Properties

No account of this singular transaction would be complete without a sample of the evidence of Wilfrid P. Gregory given on April 26, 1967. Gregory, it will be recalled, was a shareholder of Frederick's and he and his company were shareholders of N.G.K. Investments, as well as being shareholders of Aurora Leasing Corporation to a very substantial extent. He was thus in a position and, indeed, had an obligation to concern himself closely with the activities of these companies for which he received financial statements and to which he had directed large sums either by way of loan or investment of the company over whose affairs he presided. The following questions and answers are pertinent:¹

"Q. Were you aware that Aurora Leasing Corporation was lending any money to any person or corporation in connection with the Treasure Island Shopping Centre other than Frederick's of course?

⁶Exhibits 1475-6.

⁷Exhibit 1477.

⁸Exhibit 1478.

¹Evidence Volume 116, pp. 15725-7.

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A. I had no knowledge until after the collapse that there was any borrowing from Aurora by Treasure Island. Any of this stuff, or that Aurora was even lending money on that kind of thing.

Q. So, do I understand your position to be that while you were aware that Mr. Morgan was taking some interest in this Treasure Island Shopping Centre, you were not aware that the centre was being partly financed by a loan of \$800,000 from Aurora Leasing Corporation? Is that correct?

A. That is. I was definitely not aware of any of that type of thing.

Q. If you had been aware that Aurora Leasing Corporation was lending \$800,000 in the circumstances which I have described, may I take it you would have been shocked?

A. I would have been.

Q. What action would you have felt obliged to take?

THE COMMISSIONER: Sorry. I didn't hear the answer to the question.

THE WITNESS: I would have been.

THE COMMISSIONER: Yes.

THE WITNESS: This is hypothetical, isn't it?

MR. SHEPHERD: I don't think so, Mr. Gregory, we are going to have to go into this in some detail and you have told us yesterday your obligations of this nature in connection with directors. Would you have felt obliged, for example, to call to the attention of the Atlantic directors that Mr. Morgan was making a loan of this nature with a company in which he had an interest?

A. By Aurora?

Q. Yes?

A. Aurora had nothing to do with the Atlantic.

Q. Mr. Gregory, Aurora obtained its money from Atlantic. Aurora borrowed from Atlantic, did it not?

A. No sir, it didn't.

Q. Did you not tell me yesterday, that you knew that it did?

A. I know now that it did, and I knew that it must have been then, but this wasn't one of the facts of life staring me in the face every day, that Aurora was borrowing from Atlantic, because I never followed the progress of Aurora except when I got an annual statement once a year.

Q. May I take it under those circumstances, you would not have felt obliged to have informed the directors?

A. I don't think I would have thought of it.

Q. What action would you have taken in respect to Aurora in which British Mortgage had a significant interest?

A. I think what we would have done if we had known—this hits me like this—however, this is how you make decisions when you are running a business. I think we would have said, the deal is off.

Q. Yes?

A. Even though it meant we were going to be—have to find another buyer.”

Mr. Shepherd then refreshed the witness’ recollection about the arena on which he recalled lending money and the examination proceeded.²

“Q. From what source did you first learn that Aurora was lending money to Treasure Island Properties?

A. I think it was from Mr. Farlinger.

Q. After the collapse of Atlantic in any event?

A. Yes.

Q. Would you look at Exhibit 1471 please?

A. I am just—

Q. I was going on with the Treasure Island Gardens loan. Was there something you wished to . . . ?

A. Well, it is so hard, again, to recall exactly when you learn some information that I don’t believe, as I have said, that I knew that there was—I can’t think why I would know that Aurora had ever loaned any money to Treasure Island Properties, because I wasn’t part of the transaction and there was just—I was just trying to check the accuracy of my remark.

Q. Do you have some doubts about it? Maybe you knew that Aurora was lending money to a company in which Mr. Morgan had an interest?

A. No, we bought out an Atlantic note.

Q. I was going to come to that. That was Atlantic?

A. This is what I was wondering.

Q. Do I take it your answer respecting knowledge of Aurora’s loan is not qualified in any way?

A. Yes.”

Counsel then put to the witness the correspondence which has just been described relating to the assignment and guarantee by Atlantic to British Mortgage & Trust, and particularly the reporting letter from Menzies in which the position of Aurora Leasing had been referred to.³

“Q. Did you receive that letter?

A. I received it.

Q. Did you read it?

A. I don’t think so.

²Evidence Volume 116, pp. 15728-9.

³Evidence Volume 116, pp. 15736-42.

MR. SHEPHERD: Do you say that upon receipt of that letter you remained unaware that Aurora Leasing Corporation was lending \$800,000 to a company in which Mr. Morgan had an interest?

A. When that letter came in, this long reporting letter on this matter, it was on my desk and I told John Gordon, my assistant treasurer to take the letter and look after these notes.

Q. And you say you did not read it?

A. I did not read the letter.

Q. Did you look at any of the documents included in the letter?

A. I looked at the note, and I looked at the assignment of the mortgage.

Q. You did not look at any of the documents, or read the letter, to determine whether or not appropriate steps had been taken to assure British Mortgage of its priority in connection with a loan of three-quarters of a million dollars, is that correct?

A. This is why I turned it over to my assistant.

Q. Is Mr. Gordon a lawyer?

A. No, he is not. But, once again, as I have stressed before, we were lending on the security of Atlantic Acceptance credit.

Q. But, Mr. Gregory—

A. I had refused to lend money to Mr. Morgan on his Treasure Island Gardens, on a mortgage—

Q. I wish to stress to you, you testified under oath that you did not know that Aurora Leasing Corporation Limited loaned \$800,000 to a company in which Mr. Morgan had an interest.

Here is a letter which you received that sets the matter out in great detail. Have you any observations to make on it? To start with, you did not read it?

A. All right, I don't think I read it, and I say I did not read it, because I remember seeing this three-page letter—I have lots to do, much more important than that, and I turned it over to Mr. Gordon. But, just a few minutes ago I was trying to recall whether the Aurora was involved in this thing, I don't remember, but you say that it was just Atlantic.

Q. No, no, no, Mr. Gregory.

A. And I was starting to get clear, was Aurora—or some mention of Aurora in connection with that Treasure Island Shopping Centre.

Q. Well now, you think that you did know that Aurora was lending money to Mr. Morgan?

A. I don't recall. If I had a glimmer of it, you know, if it passed my conscience you know, you know it in passing.

Q. Is it possible that you knew?

A. It is possible.

Q. Is it fair to say that if you did know, you took no action?

A. That is quite right.

Q. Would you look at it?

A. I want to make another point in answer about thinking—in thinking about your question a minute or two ago, did I think of reporting to Atlantic Acceptance about a deal that Mr. Morgan—a loan to Atlantic that Mr. Morgan was making to a company he had an interest in, well, as I said earlier, I did not know that Mr. Morgan was interested in this Centre at all, I knew he had a mortgage on it, he asked me to take out the mortgage and this is what I did, and this is the extent of my involvement in the thing, and my knowledge of it.

Q. What do you mean when you say you did not know he had an interest in the Centre at all?

A. In Treasure Island Gardens that he is asking to take out—over this mortgage by Atlantic.

Q. You knew he had an interest in Treasure Island Properties, but it did not occur to you that he might have an interest in Treasure Island Gardens, is that correct?

A. That is correct. I never kept track of Mr. Morgan and I did not try. I had enough to do to look after my own business.

Q. Would you look at Exhibit 1474 please, and this is a letter dated 22nd of July, 1964, addressed to Messrs. Reid, Menzies and Creighton, Barristers and Solicitors, 365 Richmond Street, London, Ontario. Attention J. L. Menzies, Esq. Re: Treasure Island Gardens Limited, Atlantic Acceptance Corporation Limited and British Mortgage & Trust Company.

‘Thank you for your letter of July 21st, reporting on this matter in a most complete fashion. I acknowledge receipt of the documents which are listed in your letter.

Yours very truly,
“Wilfrid P. Gregory”

And the—and below that are the letters W.P.G., G.M. Is that correct?

A. That is correct.

Q. Did you write that letter?

A. I did.

Q. And in the light of that letter, can you assist us as to whether you now recall perusing Mr. Menzies’ letter to British Mortgage?

A. Well, Mr. Shepherd, I cannot just see what all this is about.

Q. Mr. Gregory, please answer the question.

A. All right, I will answer the question. I glanced at this letter, I saw that the documents were there, and I turned the thing over. Now, I was not going to get into all the—I was not the solicitor for British Mortgage & Trust and I was not the man that looked after the securities. I was the president of the company, and I don’t usually even see these letters.

Q. But you saw this one, Mr. Gregory?

A. Here is the first page. This is what comes across my desk, and I saw the documents and I glanced at the thing, but I did not study the effect of the letter, I did not analyse it as you and your accountants have been doing for sixteen months."

In fairness to Gregory it must be said that he took the position that the only thing that really mattered to British Mortgage & Trust was the lending of money on an Atlantic note for three months and, in view of the recording of the loan in the report to the Registrar of Loan and Trust Corporations, he may have convinced himself that this is what had happened; otherwise that portion of the report must be considered deliberately false.

Morgan, Reid and Wagman Undeterred by Mounting Debt and Losses

The only financial statement for Treasure Island Properties Limited which has been discovered, and indeed appears to exist, was prepared by Wagman, Fruitman & Lando without audit for the period ending March 31, 1965 and shows a loss for the year of \$64,928.41.¹ When added to the loss for the previous year of \$10,009.45 the sum produces a shareholders' deficit of \$74,934.86, with no depreciation on almost \$2,000,000 worth of fixed assets having been taken. A statement prepared by the same firm for Treasure Island Gardens for the year ending August 31, 1964 shows a loss incurred of \$43,440.41, without depreciation having been taken on fixed assets valued at \$1,029,400.13. Both companies had three shares, each issued for \$1 and unpaid, as their sole capital investment, and both of them obtained funds to carry on business from Aurora Leasing Corporation. By May 31, 1965 Aurora had advanced for and on behalf of Treasure Island Properties \$650,000 to Reid & McKillop, \$12,000 to Treasure Island Gardens and \$830,176.97 directly. Upon these advances interest in the amount of \$237,832.84 had accrued and the only repayment recorded is that of \$243,841.24, being that portion of Atlantic's loan of \$750,000 from British Mortgage & Trust Company transferred to the account of Aurora, as previously noted, in July of 1964 but not recorded as such until January 31, 1965; so that on May 31, 1965 Treasure Island Properties owed Aurora \$1,486,168.57. Other than the mortgage of \$800,000 originally given by Treasure Island Properties to Aurora, the latter company had no security for the additional amounts loaned of somewhat over \$600,000, the advances being simply evidenced by the giving of promissory notes. Treasure Island Gardens was financed almost entirely by borrowings from Treasure Island Properties and the sums advanced by the end of 1964 had reached a total of \$416,527.92, including rental of \$40,000 per annum, plus additional rentals for premises in the shopping centre other than the hockey arena operated by Treasure Island Gardens, repayments having consisted of

¹Exhibit 1479.

\$21,000 in cash, the \$100,000 lent by it to Treasure Island Properties to complete the purchase from Julia Faust, and the amount notionally repaid by the amount credited to the Treasure Island Properties loan by Aurora. One isolated loan made by Aurora to Treasure Island Gardens was in the amount of \$50,000. The funds were used to buy shares in a company by the name of London Nationals Limited which operated a junior hockey team in the Treasure Island arena. This loan was also unsecured, except by promissory note, and was never repaid.²

Two documents throw light upon the question of who was really intended to own shares of Treasure Island Properties at this stage, and who were in a position to confer much-heralded benefits upon the shareholders of Frederick's Department Store Limited. The first is a letter from Carl M. Solomon to Donald W. Reid asking for the indemnities promised to him, Irwin Singer and Elizabeth Crisp for acting on behalf of him and C. P. Morgan "as trustees for a company to be incorporated under the name of Treasure Island Properties Limited", and reciting the fact that the writer and Singer executed a mortgage in favour of British Mortgage & Trust Company and another in favour of Aurora Leasing Corporation Limited. The letter ends, "would you be good enough to insure that this matter is attended to in light of the prolonged past delay."³ Reid replied promptly for the firm Reid, Menzies, Creighton & Getliffe, promising to forward indemnities from Morgan, Wagman and himself, together with draft minutes covering the resignations of the interim officers and directors.⁴ On December 3, 1964 Solomon was again writing to Reid, pointing out that the promised documents had not been received. The second document is a long letter from Reid, dated September 25, 1964 and marked "Private and Confidential", addressed to Harry Wagman and referring to a "good meeting" in London, and the fact that Morgan, Wagman and Reid had been spectators at a hockey game, presumably in the newly-completed arena. He goes on to give his views on the spheres of responsibility of R. L. Bonnie, who was general manager of Treasure Island Properties and Treasure Island Gardens, E. B. Bishop as manager of Treasure Island Gardens and F. N. Foster as assistant manager of the latter company. He concludes by saying that he does not think that "we wish to become involved in a great amount of detail as far as the administration of the various companies are concerned, however, we should offer a little guidance at this time to the executive personnel and I am of the opinion that by so doing, we will enjoy a greater degree of efficiency in the operation of the Corporations."⁵ In this letter Reid refers to Bonnie as "concentrating his efforts on the promotion of Treasure Island Shopping Centre and White Oaks Shopping Centre, and more particularly,

²Exhibits 1480-1.

³Exhibit 1418.1.

⁴Exhibit 1418.2.

⁵Exhibit 1418.3.

the negotiation and completion of leasing arrangements in connection with both Centres". This observation about the White Oaks Centre must provoke an examination of what Morgan, Wagman and Reid then contemplated, always of course in the interests of the shareholders of Frederick's, by way of prolonging the involvement of Atlantic Acceptance Corporation and its associated companies in the disastrous London adventure.

White Oaks Shopping Centre and South Wellington Properties

The lands in lots 25 and 26 in the second concession of the Township of Westminster (now in the city of London), which have already been mentioned as the site of a competing discount store operation in the experienced hands of Sayvette Limited, had been conveyed by their owner David Rubinoff to a company of which he was a principal, known as South London Corporation Limited on May 15, 1962. In this conveyance he reserved four acres along an entrance road, but all the lands were pooled as security for a mortgage loan of \$2,600,000 provided by Capital Funds (I.A.C. Ontario) Limited in the same month. The lease to Sayvette by South London Corporation, executed in April, was assigned by the latter, together with all other leases in what was known as the White Oaks Shopping Centre, to Capital Funds in October of the same year. In January of 1963 South London Corporation mortgaged some two of the 27 acres involved to Coronation Investment Company Limited to secure the sum of \$375,000, and here the operations of the company rested until, in the following October, Donald Walter Reid as trustee appeared as the purchaser of all the lands owned by South London Corporation and Rubinoff which were transferred by two deeds, dated October 22 and registered on October 25, consideration for the conveyances being the sum of \$1,953,197 made up by assumption of mortgages in the amount of \$1,650,000 already advanced, securities to the value of \$1,500 and a note for \$301,697.¹ Thereupon Donald W. Reid as trustee executed a mortgage of all the lands to Aurora Leasing Corporation, dated October 24 but not registered until January 15, 1964, to secure the sum of \$500,000 with interest at 10%, due November 30, 1964. By the terms of this mortgage, which are most unusual, the mortgagor is excused from performing the covenants and making the payments provided for, there being apparently no liability attaching to him at all except the obligation to disclose the trusteeship should default occur. Whatever may be the validity of these precautions taken by Reid, they vividly illustrate the concern which was felt on all sides for the security of Aurora's investment which ranked behind those of Capital Funds and Coronation, to the extent of \$1,550,000 and \$100,000 respectively in amounts already advanced, the rent from Sayvette having already been assigned to the

¹Exhibits 1407-8.

former. Since the company which was to own the land, and for which Reid was acting as trustee, had not covenanted to pay Aurora anything it is not surprising that Aurora, which advanced \$341,000 on its mortgage, was never paid any interest on the loan. David Rubinoff, however, who was guarantor of South London Corporation's mortgage to Capital Funds, sought to protect himself by concluding an agreement with South Wellington Properties Limited at the outset, dated October 22, 1963, by which that company, here revealed as the beneficiary of Reid's activities, agreed to pay the Capital Funds mortgage after it had acquired title to the lands on which White Oaks Shopping Centre stood. This agreement also recited that Atlantic Acceptance Corporation had written a letter which is attached to it, and this letter, addressed to South Wellington Properties Limited, reads as follows:²

"This will advise that Atlantic Acceptance Corporation Limited is prepared to advance to you \$1,550,000.00 with which to discharge the mortgage to I.A.C. (Ontario) Limited on September 15, 1965, in return for a similar mortgage at a rate of 10% per annum for a period not to exceed 12 months. The personal guarantee of Mr. D. Rubinoff will not be necessary if the mortgage presently outstanding is assigned to us.

A similar commitment for \$100,000.00 to take care of Coronation Investment Limited is available at 11% per annum.

The stand by fee is ¼ % per annum.

Yours very truly,
 'C. P. Morgan'
 President"

Of course when that day came Atlantic Acceptance was in no position to advance anything. South Wellington Properties was incorporated as a private company in Ontario on October 4, 1963. Its records consisted of the usual minute book and entries in Reid's trust account. The three original shareholders holding one share each were D. W. Reid, D. J. McKillop and Elizabeth Foster as of October 4, 1963. No evidence of these shares having been paid for appears in the trust account. On May 15, 1964 McKillop's share was transferred to Reid; on November 30, 1965 both Reid's shares were transferred to R. L. Bonnie and Mrs. Foster's share to E. B. Bishop; as of that date the company was left with only two shareholders from which to elect its board of three directors. The original agreement of purchase and sale between Donald Walter Reid as trustee and South London Corporation, dated October 24, 1963 provided for not less than 15% or 150,000 of the shares of South Wellington Properties to be issued to the vendor as part of the purchase price. These shares were to be accorded a value of 1¢, which accounts for the \$1,500 in securities referred to in the affidavit of land transfer tax attached to the deed from South London Corporation to Reid in trust.

²Exhibit 1424.1.

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This covenant of Reid was never honoured but it was referred to in the plans for South Wellington Properties which, grandiose as they were, must be examined even though they never materialized. A convenient starting point is a memorandum among the documents found by the Department of National Revenue in Harry Wagman's briefcase. It is headed "South Wellington Properties Limited" and is reproduced below incorporating amendments made by hand to the original typescript:³

"Authorized Capital

1,500,000 Common shares, no par value

600,000 Preferred shares, non-cumulative, redeemable, par value
\$2.00 each

Treasure Island Properties Limited (a company incorporated under the laws of the Province of Ontario) owns and operates Treasure Island Gardens including the curling rink, convention centre, etc. We understand that there are issued and outstanding 3 common shares of the stock of this company. It is proposed that the shareholders owning these 3 shares exchange them for 750,000 common shares of South Wellington Properties Limited, and we suggest that this transaction be the first transaction South Wellington Properties Limited enters into. We further suggest that the corporate shell of Treasure Island Properties Limited be maintained and that it be a wholly-owned subsidiary of South Wellington Properties Limited.

We also understand that a trustee on behalf of Frederick's Department Stores Limited has purchased a shopping centre owned by South London Corporation Limited for the sum of \$1,941,000 by the assumption of existing mortgages in the amount of \$1,650,000 and the assumption of accounts payable of approximately \$291,000. We suggest that this property be conveyed to Frederick's Department Stores Limited, and after the conveyance takes place, the common shares of Frederick's Department Stores Limited, of which we understand there are 460,000 issued and outstanding for a cash consideration of \$720,000, be exchanged for 460,000 preferred shares, par value \$2.00 each, of South Wellington Properties Limited, and as an additional consideration of this exchange options and warrants of 230,000 common shares of South Wellington Properties Limited at varying prices be given to the common shareholders of Frederick's Department Stores Limited. We further understand that Frederick's Department Stores Limited have an operating deficit at the present time of some \$500,000 and have entered into a long term leasing agreement for the space occupied by Frederick's Department Stores Limited in the Treasure Island Properties. We further understand that it is the intention of Frederick's Department Stores Limited to cease its operation. We suggest that Frederick's Department Stores Limited sell off its Adam's stores and that Frederick's Department Stores Limited cancel its lease in the shopping centre which heretofore has been owned by Treasure Island Properties, and that

³Exhibit 1487.

Frederick's Department Stores Limited attempt to wind up its affairs as follows:

It will sell the shopping centre it acquired from South London Corporation Limited (*sic*) to South Wellington Properties Limited at an appraised value which we understand will result in a \$500,000 or \$600,000 profit.

It will sell its furniture, fixtures and equipment and inventory to the proposed new tenant of the Frederick's store.

After this has been completed the company can be wound up and all of its remaining assets will pass into the hands of South Wellington Properties Limited since it is a wholly-owned subsidiary.

We feel that doing the transactions as outlined above will attract no taxation other than the profits realized on the sale of the shopping centre from Frederick's Department Stores Limited to South Wellington Properties Limited after the present loss carry forward of some \$500,000 has been applied.

After these transactions have been completed, the shopping centre owned by Treasure Island Properties Limited can be appraised and an appraisal surplus created on the books of Treasure Island Properties Limited. A consolidated balance sheet of South Wellington Properties Limited will now reflect these two shopping centres at their present fair market value which will enable you to arrange your necessary mortgage financing.

November 6, 1963"

In addition to this, other handwritten working papers were found in Wagman's office, one set headed, "In order to flatten out the Treasure Island companies,"⁴ and another "Projected Operating Costs—White Oaks Shopping Centre", attached to which are draft journal entries and a pro forma balance sheet of South Wellington Properties,⁵ with other untitled pages.⁶ There is also a bundle of handwritten notes in Reid's precise handwriting taken from the office of Reid & Associates headed "South Wellington Properties Limited."⁷ Although these documents indicate some changes of detail in what appears to be Harry Wagman's original plan of November 6, 1963, they do not alter its substance which would have provided for South Wellington Properties being a parent company, owning or controlling, either directly or through subsidiaries, the White Oaks Shopping Centre, the Treasure Island Shopping Centre and Treasure Island Gardens. South Wellington Properties would own the White Oaks centre directly, all the shares of Treasure Island Properties, which owned the Treasure Island Centre, and all the shares of Treasure Island Gardens Limited which would, in turn, own the Treasure Island Gardens, or hockey arena building. South Wellington Properties

⁴Exhibit 1488.

⁵Exhibit 1489.

⁶Exhibits 1490-2.

⁷Exhibit 1423.1.

would also own all the shares of Frederick's Department Store Limited which was destined to become a corporate shell without assets. The operating deficits already accumulated would be eliminated by the simple expedient of writing up the physical assets provided by the shopping centres; mortgage financing was expected from American sources, provided by the Auer Mortgage Company in Detroit, in the amount of \$5,500,000. It was further proposed that 980,000 common shares would be issued, of which 230,000 shares would be available for the shareholders of Frederick's, and 750,000 would be issued to the beneficial shareholders of Treasure Island Properties Limited. Wagman makes no reference to South London Corporation's 15% interest and, if this was to be represented by the issue of additional shares, the total amount outstanding would have been 1,130,000.

Proposal to the Shareholders of Frederick's Department Store

This scheme was presented to the shareholders of Frederick's Department Store in a letter dated January 31, 1964 from Reid & McKillop and signed by D. W. Reid, a sample of which is one addressed to William A. Pike in Stratford.¹

"We have been instructed by the Chairman of the Board of Directors of Frederick's Department Store Limited to bring the following facts to your attention and to outline a proposal to you which will, in the opinion of the Board of Directors, enhance your investment in Frederick's Department Store Limited.

The land and buildings known as Treasure Island Shopping Centre were purchased by a Corporation known as Treasure Island Properties Limited. The same Corporation has acquired the ownership of White Oaks Shopping Centre located on Wellington Road South, London, Ontario. A new Corporation has been formed known as South Wellington Properties Limited and this new Corporation is at the present time acquiring ownership of the two above mentioned shopping centres, the combined values of which will exceed \$7,000,000.00, when both Centres are completed. It is the intention of South Wellington Properties Limited to proceed with the completion of both Shopping Centres as soon as possible.

It is proposed to exchange either one redeemable 5% non-cumulative preference share in South Wellington Properties Limited or one common no par value share having a stated value of \$2.00 in South Wellington Properties Limited for each share of Frederick's Department Store Limited issued and outstanding. In addition, it is proposed to give the existing Shareholders of Frederick's Department Store Limited an option to purchase one common share of South Wellington Properties Limited at a price of \$1.00 per share for each four common shares held in Frederick's Department Store Limited, which option shall be open for acceptance for a period of ninety days from the date of this letter.

¹Exhibit 1484.

We have been requested to inform you that the above proposal is conditional upon acceptance by all of the existing Shareholders of Frederick's Department Store Limited, and the Directors of Frederick's strongly recommend the acceptance of the proposal. If you find the proposal to be acceptable to you, please sign the enclosed acceptance form and return it to this office at your earliest convenience. You will be notified in due course whether or not all of the Shareholders of Frederick's Department Store Limited have accepted the proposal.

We will look forward to hearing from you by return mail, if possible.

Yours truly,
REID and McKILLOP,
Per: 'D. W. Reid' "

Enclosed in this letter was a form of acceptance of this proposal and an agreement to forward shares held of Frederick's Department Store Limited, upon notification that the proposal had been accepted by all of the Frederick's shareholders, to Reid & McKillop in escrow. Pike's reply was in the following terms:²

"I was indeed pleased to receive your letter of January 31st and to note that you have, along with all others involved, been successful in bringing about such an attractive proposal.

I am pleased to enclose the Acceptance properly executed and would like to indicate at this time my willingness to take advantage of offers being extended to existing shareholders to acquire further stock. If anything else is necessary please advise."

The information contained in Reid's letter that Treasure Island Properties Limited had acquired ownership of the White Oaks Centre was not in accordance with that given to Wagman, whose memorandum refers to a trustee having done so on behalf of Frederick's Department Store Limited, and no doubt Reid would have been in difficulty had he now informed the shareholders of that company to this effect, since the control of South Wellington Properties Limited was reserved in the grand design largely for the beneficial shareholders of Treasure Island Properties, who were none other than himself, Wagman and Morgan. In the end, long after it had ceased to matter, Reid registered on September 15, 1965 a deed purporting to have been executed on July 15 of that year in which he conveyed the White Oaks lands as trustee to South Wellington Properties Limited, the deed reciting that he had all along been trustee for that company³ as the agreement with Rubinoff implied.

Something further must be said about the impending shareholdings in South Wellington Properties, since the various working papers which have been discovered indicate that there were changes of plan from time to time. C. P. Morgan maintained in his evidence that the beneficial

²Exhibit 1486.

³Exhibit 1411.

owners of Treasure Island Properties Limited were to be the shareholders of Frederick's from the time that the former company purchased the Treasure Island property from British Mortgage & Trust Company. Frederick's had issued 463,000 shares of which 100,000, of 107,501 issued in the first instance to F. C. Adams, had been returned to Reid & McKillop, and were held by that firm in trust and, according to Reid, at the direction of Morgan; N.G.K. Investments held 169,514, Morgan had 10,001, Wagman 10,000, Walton 13,000, Reid 30,001 and Mrs. Adams 5,000, which account for a total of 345,017 shares. Even without an eventual disposition of shares in South Wellington Properties set aside for the beneficial owners of those of Treasure Island Properties, the Morgan group would have had no difficulty in controlling the affairs of the new company. As to Reid's shares in Frederick's, 25,000 of which he claimed to have held in trust for either Wildor Holdings or the Kings, it is of interest to note that in the course of his examination for discovery in the bankruptcy of Frederick's taken on November 18, 1965, and considerably earlier in time than the evidence he gave to the Commission, he twice asserted that he held 30,001 shares in that company, and his words in at least one place should be quoted verbatim, since the statement was made upon oath and should be carefully compared by the law officers with what has already been quoted.⁴

"3. Q. Do you have any connection, or have you had any connection with the bankrupt company?

A. I have had, yes, I was a shareholder, I was a director, I held the office of Secretary-Treasurer.

4. Q. How many shares did you hold in the company?

A. Thirty thousand, thirty thousand and one, in that neighbourhood, I'm not positive.

5. Q. When did you acquire these shares?

A. I acquired certain shares at or about the time of the incorporation of the company, and the initial shares that I acquired I paid \$1.00 per share for these. Subsequently I acquired an additional 5,000 shares at \$2.00 a share, and I don't just recall when that was."

One of Wagman's working papers dated March 31, 1965⁵ contains a note of the following figures, headed "shares equity":

	<i>Shares</i>	
Frederick's shareholders	464,000 @ \$2.00	928,000.00
D. Rubinoff, 15% of 900,000 shares	135,000 @ 2.00	270,000.00
T. I. Properties	301,000 @ 2.00	602,000.00
	<u>900,000</u>	<u>1,800,000.00</u>

⁴Exhibit 3683.

⁵Exhibit 1492.

Above these figures appears the following addendum:

W.P.G.	25,000
D. King	10,000
R. Bonnie	10,000
E. B. Bishop	10,000

From a letter written by David King to C. P. Morgan in April, 1965, in which he demanded 10,000 shares of Treasure Island Properties Limited, it would appear that this note refers to a projected issue of shares to employees of this company and the "W.P.G." can be none other than Wilfrid P. Gregory. Morgan, after referring to a discussion which he had with Reid and Gregory in the spring of 1963, was under the impression that Gregory was to get 25,000 shares from this company and the transcript of his evidence on this point is as follows:⁶

"Q. Was Mr. Gregory to have his 25,000 shares?

A. He was to have his 25,000 shares because he had assisted in the putting together of the negotiations.

Q. Was he to get these shares personally?

A. Yes, yes.

Q. Mr. Gregory said on an examination in the bankruptcy of either Aurora or N.G.K. that you offered him an interest in Treasure Island Properties Limited but that he declined it. Do you recall any such conversation?

A. It is possible. I wouldn't deny what Wilf said, he is a truthful person."

None of what was planned for South Wellington Properties came to pass because the long-term financing, so ardently sought, was never available. Nor indeed did there appear to be any prospect of further short-term financing, for Atlantic Acceptance and its associated companies by the middle of 1964 had turned their eyes in other directions. The Auer mortgage company in Detroit was still mentioned as a source of funds, and as late as June 16, 1965 Reid is to be found writing to David Auer enclosing a list of shareholders in South Wellington Properties Limited, which has not been discovered but which must surely have contained more names than Reid, Bonnie and Bishop, and announcing that "it is quite likely that the following persons will comprise the Board of Directors, Wilfrid P. Gregory, C. Powell Morgan, David Rubinoff, H. Wagman, R. S. Bonnie."⁷ Reid also conducted a correspondence with George H. Weinrott, the president of Cimcony Limited and Cimcony of

⁶Evidence Volume 25, p. 3378.

⁷Exhibit 1501.

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Canada Limited, who was talking in terms of a bond issue of \$9,000,000 and whose requests for information, assignments of leases and so forth went largely unanswered.⁸

The End of Frederick's

Thus by the time of the collapse of Atlantic Acceptance the problem of extricating Aurora Leasing Corporation and Adelaide Acceptance from the morass into which reckless and, indeed, unconscionable lending had led them was still unsolved. Aurora's loan to Frederick's Department Store stood at \$476,162, to Treasure Island Properties at \$1,519,763, to Treasure Island Gardens at \$51,491 and to Donald Reid as trustee in relation to the mortgage of the lands of White Oaks Shopping Centre, due at the end of the previous November, \$384,614, all for a total of \$2,432,030. Adelaide's single investment in the unregistered debenture of Frederick's amounted by June 17, 1965, with accrued interest, to \$634,050. All the investment of the shareholders of Frederick's in the amount of \$720,000 had been swallowed up and a substantial deficit incurred at the expense of that company's trade creditors. At a later stage of this report it will be proper to attempt to assess the not as yet fully ascertained loss of British Mortgage & Trust Company, now shouldered by its successor Victoria and Grey Trust Company, both as a primary lender and as an investor in N.G.K. Investments, in which latter rôle it shared with Aurora Leasing to a large extent the loss suffered from the former's investment in Frederick's. It would be tempting at this point to draw a line under this melancholy account, but further attention must be given to the operations of Donald Reid so far as they impinged upon the fortunes of Atlantic Acceptance and British Mortgage & Trust.

The annual returns made under the Corporations Information Act as at March 31, 1963 show only two directors for Frederick's Department Store Limited, D. W. Reid and C. P. Morgan, even though F. C. Adams' resignation is recorded as having occurred on January 10 of that year. Although the Department of the Provincial Secretary drew to the attention of Messrs. Reid & McKillop, to whose address all correspondence was sent, the provisions of section 396 of the Corporations Act, to the effect that the board of directors of a corporation shall consist of a fixed number of directors not fewer than three, the deficiency continued and was so recorded in the returns for March 31, 1964. But thereafter no more returns were filed or filing fees paid and, after advising these two directors in writing, the name of the company was duly listed in the Ontario Gazette as in default for not having filed or paid fees in respect of the year 1962. Why Reid had neglected to perform this simple function at the end of the company's first year of life can only be guessed at, but in any event by the end of 1964 Frederick's had ceased to do business and it became necessary to find another tenant for the Treasure

⁸Exhibits 1422.1 to 1422.6.

Island Shopping Centre. This turned out to be Sentry Department Stores Limited, a company represented by a firm of solicitors in Toronto known as Samuel Ciglen & Associates, and its tenancy was created by a lease dated March, 1965 from South Wellington Properties Limited, executed on behalf of the lessor by D. W. Reid without any reference to the office which he held in that company, for a period of 25 years at a rental of \$96,000 per annum.

Reid Acts for British Mortgage & Trust: Loans to Samuel Ciglen's Clients

This document presents two points of interest, the first being that South Wellington Properties was not the owner of the premises which it purported to lease, and the second that among the fixtures and equipment leased together with the premises were chattels already under lease to Frederick's Department Store by Aurora Leasing Corporation. It is perhaps not necessary to pursue this extraordinary transaction further or to inquire as to the result of the dispute which arose between the trustee in bankruptcy for Aurora Leasing, the principals of Treasure Island Properties Limited and the officers of Victoria and Grey Trust Company, but it serves both as an example of Reid's ethics and competence as a conveyancer and to introduce a transaction in which Sentry Department Stores Limited and Reno Financial Corporation Limited were involved with British Mortgage & Trust and Donald Reid. This begins with a letter from W. A. Pike,¹ addressed to Messrs. Reid, Menzies, Creighton & Getliffe and dated April 28, 1965, asking this firm to act for the trust company in taking a mortgage from Sentry Department Stores Limited on property in Ottawa and from Reno Financial Corporation Limited on property in Toronto. The former mortgage was to secure \$900,000 and the latter \$925,000. The making of these loans was described by Pike as a matter of urgency and Reid's firm was directed to co-operate with J. R. Anderson, Q.C. of the Stratford firm of Anderson, Neilson, Bell, Dilks & Misener, the trust company's general solicitors. Pike's instructions were lengthy and contained the following unusual paragraph:

"As you know we are also to receive as a bonus for taking these two mortgages a stock certificate for 25,000 shares of Frederick's Department Stores. On the telephone yesterday you mentioned that the correct name of the company might be White Oaks Shopping Centre. We do however have an understanding of the indication of the foregoing and will rely on you to see that 25,000 shares of the right company are transferred to us prior to advancing of any principal."

More will be said hereafter about this, but on May 4, Reid received, and deposited in his trust account, two payments of \$924,075 and \$899,100 representing the full amounts of the two mortgages with the mortgagee's

¹Exhibit 1419.4.

inspection fee deducted. Another \$300,000 was deposited in the trust account on May 27, received from Adelaide Acceptance and representing funds to be advanced on second mortgages on these two properties. Reid & Associates received directions from Sentry Department Stores and from Reno Financial Corporation, the first being dated April 30, 1965, authorizing the firm to withhold the sum of \$125,000 from the proceeds of the British Mortgage & Trust loan to apply to legal fees and commissions payable, and the second, dated May 27, to disburse an aggregate of \$2,000,000 in payment of various accounts payable of these two companies, the balance to go to their solicitors, Samuel Ciglen & Associates, in trust. This included an amount of \$8,000 to be paid to South Wellington Properties, and it was in fact paid by Reid & Associates on June 14 to Adelaide Acceptance to the credit of Frederick's Department Store.²

According to Reid's own account the vendors to Sentry and Reno of the premises in Ottawa and Toronto known as G.E.M. Stores were not prepared to close on the appointed day, and, as the records of the trust account indicate, he took the \$1,800,000 advanced by British Mortgage & Trust and bought a short-term demand note of Atlantic Acceptance, bearing interest at 4¼ % and payable to Reid & Associates. This was called for payment on May 21 on which day the money returned to the firm's trust account plus \$3,353.42 in interest. The transcript of Reid's evidence on the point is as follows:³

—"The Reporter read the following question:

'Q. Do you recall purchasing a note for \$1,800,000 issued by Atlantic Acceptance Corporation Limited payable with an interest rate of four and one-quarter per cent upon demand in the month of May, 1965?'

MR. SHEPHERD: What is your answer to that?

A. I did not purchase the note, Mr. Shepherd.

Q. What was done respecting \$1,800,000?

A. I had \$1,800,000 from British Mortgage & Trust in order to put me personally in funds to close the transaction relating to properties in Ottawa and Toronto.

Q. Were these two mortgages, one from Sentry Department Stores Limited and one from Reno Financial Services?

A. Yes.

Q. Go on, please?

A. I attended in Toronto in an effort to close these transactions, and in addition to the moneys paid to me by British Mortgage & Trust, moneys were to be payable to me by Adelaide Acceptance.

²Exhibits 1419.1 and 1419.2.

³Evidence Volume 21, pp. 3012-5.

Q. Yes?

A. I attended to close and, because of a lack of preparation on the part of the purchasers and vendors, they just were not ready to close the transaction. I attended at Mr. Morgan's office and informed him that the transaction would not be closed that day as anticipated.

Q. Yes?

A. There was an agreement on the part of Sentry and Reno to pay interest on the moneys however in order to keep them available day to day, because it was a very large sum of money.

Q. Am I to understand Sentry and Reno were to pay interest to British Mortgage & Trust?

A. That is correct.

Q. As if the money had been advanced on the closing date?

A. That was the agreement, in order to enable me to hold the funds. When I attended at Mr. Morgan's office he said to me—I informed him of this fact that I was not able to close, and he said, 'Well, you had better write out a cheque to Atlantic Acceptance for that money, and as soon as you are ready to close I will set it up in your account, available to you to close'. I indicated to him that I would require a direction from British Mortgage & Trust to do so. He indicated to me that that was not necessary at all. I suggested that I telephone Mr. Gregory, and Mr. Morgan indicated to me that that was not necessary at all. I said, 'Well, I have to have something in writing,' because I was not questioning Mr. Morgan's authority to give me these instructions but I did want something in black and white in connection with this cheque. Mr. Morgan instructed Mr. McFadden to prepare a letter to me under the corporate seal of Atlantic Acceptance Corporation Limited acknowledging receipt of these funds and agreeing to pay them over to me on demand. Mr. Morgan came back to the room and he said, 'For your difficulty in the transfer, in bookkeeping and inconvenience, I will even pay interest on this money, which may reimburse you for some of the other disbursements which you have incurred acting on my instructions.'

Q. And what did you do?

A. I gave Mr. Morgan a cheque."

Reid's Disbursements and Final Letter to Pike

Morgan described as ridiculous the suggestion, made here in evidence to which he listened in the course of the hearing, that he had told Reid that it was unnecessary to obtain instructions from British Mortgage & Trust. In any event Reid did not do so and merely appropriated the interest paid as part of his fees. This transaction seems to be indefensible, since he was bound to account to either British Mortgage & Trust for the interest obtained, or to Sentry or Reno if either of them were paying interest to British Mortgage & Trust to keep the money available. That

it was also hazardous, one month before Atlantic's default, was not of course apparent at the time, but an investment of trust funds by a solicitor for his own profit cannot be condoned. Reid did not report to Ciglen until June 28 and did so on that date in a long letter which concluded with an expression of gratitude for Ciglen's "gracious hospitality extended to us during the many weeks involved in closing this transaction"; he said he would take the liberty of calling on Ciglen when he was next in Toronto. Attached to the letter are two statements of receipts and disbursements. The first dealt with receipt and disbursement of \$2,000,000 in which the disbursement of \$8,000 to South Wellington Properties was duly recorded although, as has been seen, it did not take place in that form, and the second dealt with the \$125,000 which had been withheld, pursuant to the directions of Sentry and Reno, for commission and fees. From this amount Reid records the sum of \$100,000 as having been disbursed for "commission and fees as directed" and then lists a number of disbursements which conclude with the payment to Samuel Ciglen & Associates of \$5,564.13, being the balance on hand. Of the \$100,000, the disbursement of which was so cryptically reported, Reid actually paid on May 31 \$7,000 to Chartered Management Consultants and \$60,000 to Valley Farm and Enterprises Limited, transferring \$33,000 from trust to his firm's office account. When asked by counsel to explain these payments he said that services were performed by Morgan and Wagman in arranging the Sentry and Reno loans from British Mortgage & Trust.

Before leaving this transaction it will be instructive to note how British Mortgage & Trust Company, so badly served throughout this lamentable period of its history, fared with the one stipulation to its own advantage which had been made in connection with the Sentry and Reno loans. On November 3, 1965, W. A. Pike, then an employee of Victoria and Grey Trust Company, wrote to Reid & Associates inquiring about the 25,000 shares of Frederick's Department Store Limited which were to have been received by British Mortgage & Trust. He received the following, and perhaps not unexpected reply from Reid in a letter dated November 10:¹

"We have noted your comments with respect to the issuing of 25,000 shares of Frederick's Department Store Limited. You will undoubtedly recall that the matter of the handling of the issuing of these shares was discussed both with you and Mr. Gregory prior to the advancing of funds under this loan. The intention was, of course, that British Mortgage & Trust Company would eventually acquire shares in the corporation which would own both Treasure Island Shopping Centre and White Oaks Shopping Centre. Since refinancing arrangements were not completed for the Treasure Island and White Oaks Centres on the closing of the Sentry and Reno transactions, we were instructed to advance

¹Exhibit 1503.

funds under the Sentry and Reno loans on the understanding that the shares in the Shopping Centres would be issued at some subsequent date. Mr. Dilks attended the closing of the Sentry and Reno deals on your behalf and he will undoubtedly have notes in his file confirming instructions given both to him and to this firm.

You are aware of the fact that the issuing of these shares was something that was discussed between Mr. Gregory and Mr. Morgan at a time when their relationship was quite different than it is at the present time. We regret that we can offer no advice as to whom you should look in order to collect any funds in this connection."

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London Lighthouse Investments Limited

One of the reasons advanced by Reid for accepting Morgan's alleged suggestion about the investment of the \$1,800,000 in his trust account without a direction from British Mortgage & Trust Company was his experience with London Lighthouse Investments Limited. This was incorporated as a private company in Ontario on January 21, 1965, on the application of three stenographers in Reid's office, and the occurrence of the word "Lighthouse" indicates its connection with Atlantic Acceptance which employed that symbol as its distinguishing mark. The incorporators applied for the name granted to them, or alternatively for the name Oakville Lighthouse Investments Limited, the purpose of the company being to own the lands on which Atlantic's head office in Oakville was built and to which a large extension was planned. It was suggested by Reid that the name "London" indicated financial participation by residents of that city, but it must be concluded from the evidence now to be examined that final ownership of the shares was intended to rest in familiar hands. Walter Pahn, for instance, became a director according to the minute book on February 18, 1965, and a declaration given to the Royal Bank of Canada dated June 9, 1965, signed under seal by Betty Foster, reports the directors to be Walter E. Pahn, herself and Frank Cockburn, another employee of Chartered Management Consultants. The same declaration states that Walter E. Pahn was president, Elizabeth Ann Foster secretary, and Harry Wagman controller. It is perhaps unnecessary to say that the share certificate records remain undisturbed by these purported changes among the directors, the usual three shares being issued at \$1 each with no record of any payment having been made.

The Deal with Great West Saddlery for Purchase of Atlantic's Head Office Property

The head offices of Atlantic Acceptance were housed in a building on the North Service Road, adjoining the Queen Elizabeth Way within the limits of the town of Oakville. Atlantic leased the property from

Malar Holdings Limited in 1961, the latter conveying it in November 1964 to Oakville Properties Limited. A feature of Atlantic's lease was the covenant of the lessor to agree to the sale of the property for a stated sum should it not be prepared to erect an addition to the existing building for Atlantic's use. At about the same time officers of the Great West Saddlery Company Limited which controlled a subsidiary company by the name of Richardson Construction, owing Atlantic somewhat in excess of \$200,000 which it was unable to pay, approached C. P. Morgan with a proposition that their company or its nominee would acquire the Oakville property together with adjoining lands, finance and construct the required addition, lease the property in its turn to Atlantic, and subsequently sell the whole concern at a profit which would be applied to Richardson's debt. As the full implications of this suggestion, which was elaborated in negotiations during the autumn, became clear to Morgan, he found the prospect of controlling the ultimate owner of the lands attractive to himself, and Donald Reid was called into consultation. London Lighthouse Investments Limited was the result and the plan finally adopted was for the company to acquire the land and existing buildings from Great West Saddlery at a profit to the latter which would either accrue directly to Atlantic or be held in some form of pledge against the discharge of the Richardson company's indebtedness. Accordingly, on January 21, 1965 an agreement of sale was signed between London Lighthouse and Philip F. Boylen, in trust for Great West Saddlery providing for the purchase by the former of the property in question at a price of \$725,000, and for the production by Boylen of a contract for the construction of an addition to the existing building for a price of \$350,000. Pending the closing of this transaction, \$150,000 of Atlantic Acceptance notes were to be deposited in escrow with the Crown Trust Company.

On January 22, 1965, London Lighthouse authorized by telegram, signed by Reid & Associates, the deposit of the notes. On the same day, Atlantic Acceptance drew a cheque on the Toronto-Dominion Bank in favour of Adelaide Acceptance in the amount of \$150,000, charging this sum to inter-company loans. This amount was credited on the books of Adelaide to "notes payable Atlantic Acceptance Corporation" and Adelaide thereupon drew a cheque on the Toronto-Dominion Bank in favour of Atlantic to purchase Atlantic short-term note No. 2853 for \$150,000. This was recorded as an advance to London Lighthouse. On consolidation of the accounts the inter-company loan would disappear, leaving a debit from London Lighthouse with a credit to short-term notes payable of \$150,000. Thus this stipulation in the agreement was fulfilled without Atlantic or anybody else putting up any money.¹ On February 18 British Mortgage & Trust Company made an advance to Atlantic of \$480,000 which Atlantic credited to its short-term notes

¹Exhibits 3343-6.

account, and for which there is no authorization appearing in the minutes of the trust company's board of directors or executive committee. The next day Atlantic drew a cheque in favour of Reid & Associates in the amount of \$328,975, and the inscription on the remittance advice described this payment as "disbursements against cheque for \$480,000 deposited today from London Lighthouse Investments Limited". This was again charged to short-term notes and Atlantic at once issued a cheque to Adelaide for \$151,025 to pay for the short-term note in favour of Crown Trust Company, called for payment on February 19, and being credited by Adelaide to notes receivable from London Lighthouse of \$150,000 and interest of \$1,025. Adelaide thereupon, and also on the same day, drew a cheque to the order of Reid & Associates in trust in the amount of \$127,000. The difference between the amount of \$480,000 received from British Mortgage & Trust and the \$455,975 advanced to Reid & Associates, being \$24,025, remained in Adelaide's bank account.²

A statement of adjustments prepared by Messrs. Ruwald & Poolman on behalf of Philip F. Boylen as vendor shows the ostensible nature of this transaction as a sale to London Lighthouse Investments Limited of part of Lot 11, Concession 2 S.D.S., Township of Trafalgar for \$725,000, payable as of February 18, 1965 by what is described as a third mortgage to be given back by the purchaser to the vendor to secure the amount of \$125,000 and, as a result of minor adjustments of rent and taxes, a balance to close of \$598,858.03. The statement³ indicates that part of this balance has been paid in the form of a promissory note for \$150,000, payable to and held by the Crown Trust Company, and the copy in evidence is endorsed with a receipt for "Atlantic notes payable to Pilkey and other for \$150,000". As seen above, this note was actually called for payment, and the requirement was fulfilled by the delivery of Atlantic Acceptance medium-term senior notes representing a debt to Burlington Investments Limited, a private company owned by the Pilkey family who were principals of Oakville Investments Limited, of \$100,000 and to Mrs. Nedra Pilkey of \$50,000. Mr. A. W. Moreton, C.A. of Touche, Ross, Bailey & Smart, who analysed this transaction and gave evidence about it to the Commission on October 6, 1966,⁴ testified that the notes were handed to Reid, by Reid to Poolman, by Poolman to Boylen, and by Boylen to the Pilkeys, although the only reference to the notes referred to in Poolman's reporting letter of July 12 to Great West Saddlery Company is as follows: "the deposit in the form of a \$150,000 promissory note, deposited by the purchaser with the Crown Trust Company was released to the Purchaser on closing," and the solicitor goes on to say that all the financial arrangements for closing were made by Mr.

²Exhibits 3343-52.

³Exhibit 3353.

⁴Evidence Volume 70.

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A. T. Holland of the Great West Saddlery Company and he has no record of them. What actually happened is perhaps unimportant, but the records of the Montreal Trust Company show Burlington Investments Limited as holding \$100,000 of these notes at the time of Atlantic's default and Mrs. Pilkey \$40,000, she having been repaid \$10,000 in May. Poolman's reasonable assumption that the mortgage referred to in his statement would be a third mortgage was not, however, justified by the event. It was registered on title on February 19 at the same time as the deed from Boylen to London Lighthouse, and the assignment by Boylen to Atlantic Acceptance Corporation Limited was also registered, securing to Atlantic the position of first mortgagee. This assignment⁵ is absolute in form except for the interpolation in handwriting of the following, immediately above the signature of Boylen witnessed by Ruwald: "This agreement is made to collaterally secure an indebtedness of the Great West Saddlery Company Limited to Atlantic Acceptance Corporation Limited and the assignee agrees to reassign the mortgage at the expense of the assignor upon the discharge of the said indebtedness. All payments made under the assigned mortgage are to be made to the assignee to be credited to the account of the Great West Saddlery Company Limited." The instrument was not executed by Atlantic Acceptance and, consequently, this covenant would appear to be inoperative. The expected mortgage to British Mortgage & Trust Company dated February 22 was not registered until July 5, thus ranking behind Atlantic's mortgage. Ruwald & Poolman recorded in their trust account, under the heading "Holland A.T. et al re Pilkey", receipt of a cheque on February 19 from Reid & Associates in the amount of \$448,858.03, and a disbursement on the same day of this amount to the Great West Saddlery Company.

Some mention should be made of Boylen's position and that of Great West Saddlery, since considerable and prolonged efforts were made to perfect his title as vendor in a manner which has aroused the interest of the trustee in the bankruptcy of London Lighthouse Investments Limited. The troubled history of the Great West Saddlery Company had resulted in the accumulation of losses which for income tax purposes could be applied against the income of future years, and this "tax loss" situation—to use the unintelligible vernacular—apparently justified the acquisition by the company of the shares of Oakville Properties Limited, Burlington Properties Limited and Malar Holdings Limited, together with two parcels known as the "Chedoke Property" and "Firestone Properties", in which the principals of these companies had an interest, for a total of \$726,900. By disposing of the current assets of the companies whose shares had been purchased, repaying shareholders' loans and arranging new mortgages, Great West Saddlery acquired cash of \$187,750 which, added to the proceeds of the sale to

⁵Exhibit 3357.

London Lighthouse, amounted in the aggregate to \$911,608, including the \$125,000 secured by the mortgage from London Lighthouse to Boylen, the assignment of which to Atlantic reduced its receipts to \$786,608. Its disbursements, including over \$50,000 in penalties and legal fees, amounted to \$785,416.27 and the profit on the transaction was substantially the amount of \$125,000 credited to the debt of Richardson Construction.⁶

Position of British Mortgage & Trust Company

In returning to the position of British Mortgage & Trust Company a letter from Reid, Menzies, Creighton & Getliffe to W. P. Gregory, dated March 1, 1965 and commencing "Dear Wilf", is the first to be noticed.¹ It encloses a direction to British Mortgage & Trust, signed for London Lighthouse Investments by B. A. Allen and B. Foster of Reid's office staff, directing it "to pay the sum of Four Hundred & Eighty Thousand (\$480,000.00) Dollars presently being borrowed by this company from you to Reid & Associates in trust", as well as a promissory note executed by the same persons, undertaking to repay to British Mortgage & Trust this amount in three months time together with interest at $7\frac{1}{2}\%$ per annum, and dated February 18. At the foot of the note is an endorsement guaranteeing payment by Atlantic Acceptance and executed for the guarantor by C. P. Morgan as president. The second is a letter to Reid & Associates from British Mortgage & Trust, signed by Pike and dated June 23, 1965, announcing that the trust company has approved a loan on the Oakville property of London Lighthouse and will be "obliged if you will act on our behalf in registering a mortgage just as quickly as possible". The letter continues: "The mortgage may bear any convenient date and will come to us from London Lighthouse Investments Limited; principal \$480,000; interest $7\frac{1}{2}\%$ per annum; computed from February 22, 1965 and payable half yearly . . . the mortgage shall mature February 22, 1966." The dismay and anxiety at British Mortgage & Trust, spanned by these two communications, can be imagined.

Reid's evidence on the subject of London Lighthouse Investments Limited was to the effect that the idea of forming a company to purchase Atlantic's head office lands and premises from the existing owners originated with Morgan, and that he himself had discussed the desirability of investing in it with people in London and had in fact arranged a mortgage loan in the amount of \$850,000 which was not proceeded with. Nevertheless, on Morgan's instructions, he made arrangements to incorporate London Lighthouse and take title to the property in its name. After the default the minute book and other records were sent to

⁶Exhibit 3359.

¹Exhibit 3360.

Morgan by mail. Reid recollected that the purpose of the transaction was to cause the existing owners to sell to a third party at a price in excess of the fair market value so that some benefit would accrue to Atlantic Acceptance, but he conceded that the incorporators would have conveyed the shares to Morgan himself or any nominee, and this in fact had been done. As to the participation of British Mortgage & Trust Company he had this to say:²

“Q. Was British Mortgage & Trust to get a mortgage on these lands?

A. No. When I received my instructions—I believe the flow of money went from British Mortgage & Trust Company to Atlantic and was entered to my trust account, if I recall correctly. I may be in error, but I think that is the case. But when I received instructions on this matter I telephoned Mr. Gregory and reported to him that I had not received any instructions as to how his mortgage was to be drawn, and what terms and conditions were to be included in the mortgage. I was instructed that no mortgage was required in the circumstances.

Q. Mr. Reid, the lands were there available to be mortgaged, the security was available if British Mortgage wanted to take it. Was there any discussion as to why they did not bother to take the security that was there?

A. Mr. Shepherd, I will tell you the words that were used, because they will stick in my mind forever. Mr. Gregory said ‘don’t clutter up the title with a mortgage’.

Q. And you did not?

A. That is correct.

Q. Then ultimately in July, 1965, British Mortgage did take a mortgage, did they not?

A. Yes. Subsequently I had a discussion with Mr. Gregory on this point and he indicated a great deal of concern about the loan and solicited my co-operation in attempting to obtain a mortgage. I subsequently received instructions and they did proceed to get a mortgage.”

Mr. Shepherd put to Reid an item from his handwritten notes,³ the authorship of which he acknowledged, which read as follows: “Re Lighthouse. Need instructions from Wilf—Can sell deal now—before built for \$1,350,000 or \$1,300,000—Suggest selling and keeping land to north for future expansion”. Thereupon the witness said that this referred to one of the first discussions undertaken in connection with London Lighthouse in which the vendor (presumably Boylen) had suggested that, if a suitable mortgage were arranged, the whole proposition could have been sold to investors before the actual construction of the building. Gregory’s evidence is illuminating, since it illustrates the relationship

²Evidence Volume 21, pp. 3025-6.

³Exhibit 1425.1.

between Gregory and Morgan at the time and the exceptionally uncritical attitude of the former.⁴

“Q. Was there any doubt at all in your mind when Mr. Morgan made these approaches to you that Mr. Morgan must have an interest in London Lighthouse?

A. There wasn’t any thought in my mind that he did, other than as president of Atlantic Acceptance.

Q. Why would you not expect to hear from the principal of London Lighthouse with respect to a loan made to that company?

A. Mr. Morgan did so much negotiating for everybody. The fact that he knew me and the fact that he always refused to go through my officers which I often asked him to do—I just figured well, he said, ‘Well, I know Gregory. I will see about it.’

Q. Did you not think it odd that he wouldn’t volunteer the information as to who these persons were who were borrowing \$480,000?

A. He volunteered nothing. You knew better to ask him when you started doing business with him very long.

Q. I wonder why you didn’t ask him—why didn’t you say, ‘London Lighthouse. Who were they, whatever you call them?’

A. Maybe I should have, but what difference did it make. I didn’t care what security they had or who they were, as long as we had Atlantic Acceptance guarantee. This is what I wanted. He wanted the loan if he would give me their guarantee and if he could do it and I said, ‘If you can get me Atlantic’s guarantee, the loan is okay’.

Q. Why did you not want to take the mortgage?

A. Well, this was probably foolish of me, but I had refused the mortgage and this gets back to where Reid phoned me up and said, ‘What are your instructions with regard to the mortgage on the London Lighthouse deal’ and I was a little annoyed, because I think, because of the fact I had turned this mortgage idea down at least twice and maybe a third time and I said, ‘It is not good mortgage security and I won’t have that kind of mortgage on my books’, and then I did—not thinking at all at that time, that some kind of mortgage is better than no mortgage. I said, ‘Just give me the note. It is all I want’. That is what I got. About two months later I was happy to have a mortgage and then I asked for it and got something.

Q. Did you know who the officers of London Lighthouse were?

A. No. Whoever signed the note, I presume. The officers—as long as they signed over their seals and guarantee was proper.

Q. Did you know Mr. Pahn, Walter Pahn?

A. Well, when you say, ‘Did I know him’, I think I met him once in the—and would recognize him. He was in Walton Wagman’s office, I think. It wasn’t in ’65.

⁴Evidence Volume 115, pp. 15685-90.

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Q. Can you assist us at all, as to whether you recall him being an officer of London Lighthouse?

A. I can't assist you. I think maybe he was, but I was surprised because he is just a clerk.

Q. You say, 'you were surprised'. Do I understand you to mean that you were surprised in the sense that you assumed he was acting for someone else?

A. Yes. I am surprised he would have been named an officer of London Lighthouse.

Q. Well then, perhaps I have misunderstood you. Are you saying that if he was, you didn't know?

A. I didn't know at the time, and when I found out, I was surprised.

Q. Well, let me see now, Mr. Morgan asks for a mortgage on these premises which you declined. Is that correct?

A. That is correct. That is right. Twice.

Q. And why did you decline it again, please?

A. Because there wasn't sufficient value in the mortgage over and above the first mortgage that was on there. We could only go two-thirds of total value including the first mortgage and blanketting the first mortgage.

Q. Then, he asked you a third time and you agreed to lend the money against a note from London Lighthouse guaranteed by Atlantic. Is that correct?

A. Yes. In other words, it was Atlantic's notes.

Q. When there was first discussions about you having the additional security of a mortgage on the premises, you took the view that you didn't want it. You wanted the guarantee of Atlantic and that is what you had. Is that correct?

A. Yes. I don't know whether Reid intended to offer that as an alternative or not, but when he said 'What are the terms of the mortgage?', I simply said, 'I wasn't interested in the mortgage,' but, I said, 'I would lend it on Atlantic's guaranteeing the note and just to get me that, and they could have their money'.

Q. Well now, after the collapse of the Atlantic by early July, British Mortgage & Trust I believe, did in fact obtain a mortgage on these premises which it registered.

How did that come to pass? It was then being contended that this was all a mistake earlier, I understand?

A. Not by me it wasn't.

Q. What happened?

A. I phoned Reid, I think, a week or so after the—well, the second week when we knew things were really going bad and he had been looking over what—how we were being affected by Atlantic and I guess I

ate humble pie a bit and said, that we had not insisted on a mortgage before, but under the circumstances we would be delighted to have a mortgage. Would you now get it for me?"

Here again is convincing proof that Morgan and his associates were quite untroubled by the prospect of Morgan being in a position to benefit from a contractual relationship with the company of which he was president instigated by himself, and that among these associates must be included W. P. Gregory, Q.C., president of a venerable trust company and a bencher of the Law Society of Upper Canada, who showed an astonishing degree of recklessness about his company's security, only brought home to him by the financial collapse of the borrower through which he had so offhandedly lent in this instance almost half a million dollars on its simple guarantee of the note of a company without assets before the closing with Boylen. The real value of the property upon which Atlantic's head offices stood was, of course, much less than anything that would have justified the price paid by Boylen, except as it might be contrived to appear in the stratagem devised by Morgan and himself. A valuation of the lands and buildings in question was made in November 1965 by E. P. Brownridge & Co.⁵ in the amount of \$315,000, but at this time the addition was incomplete, the construction company with which Boylen had contracted having run out of money and having commenced a mechanics' lien action for upward of \$110,000. Atlantic's loss as a result of this transaction, could not, on the face of it, appear to be considerable since it acquired a first mortgage on the property to secure \$125,000 and had advanced \$127,000, retaining somewhat more than \$24,000 in the account of Adelaide Acceptance after creating obligations in the form of notes to the amount of \$150,000 upon which interest still accrues in respect of \$140,000. As a device for securing repayment from the Great West Saddlery Company, however, the operation appears to have been fruitless, and the security otherwise provided for the Richardson Construction debt has created difficulty for the trustee. British Mortgage & Trust, with a third mortgage and a note from London Lighthouse Investments endorsed by Atlantic Acceptance, was the real loser, and its successor Victoria and Grey Trust Company eventually accepted \$55,000 to close the account.

Delinquency of Donald W. Reid

For his consistent and almost single-minded mismanagement of the affairs of his clients over the four-year period Donald W. Reid charged, in respect of the major transactions alone, \$130,000 in fees.¹ He was disbarred and struck off the rolls by the Law Society on August 27, 1968, and I am bound to say that it would, in my opinion, be adverse

⁵Exhibit 3363.

¹Exhibit 1504.

to the public interest were he ever allowed to resume the practice of law. The overwhelming majority of lawyers in Ontario are content and, indeed, anxious to found their livelihood and their reputation in the communities in which they live upon the hard work and sound advice which they offer to the public. There are unfortunately practitioners who, from the beginning of their careers, use their privileged status and the confidence which it inspires wholly in their own interest, and among these Reid must certainly be numbered. If one adds to the records of his self-seeking and incompetence a strong suspicion of fabricating evidence and of perjury committed in the course of his testimony to the Commission, his case is serious indeed. Of the other principal actors it can only be said that their activities must be judged in the light of many other transactions to be examined in this report, but that what they did was entirely consistent with all that had gone before, and with what they were doing contemporaneously in other related matters at the expense of the shareholders of Atlantic Acceptance and British Mortgage & Trust.

CHAPTER VIII

Commodore Business Machines and Associated Companies

Transformation of Commodore Portable Typewriter Company

The fortunes of Commodore Portable Typewriter Company Limited, last examined incidentally to the creation of Commodore Sales Acceptance Limited by Atlantic Acceptance and the indefensible transactions by which Atlantic finally achieved complete ownership of its own subsidiary, must now be recounted in detail, since they present a new aspect of the many-faceted mass of Atlantic operations. As a result of resolutions taken at a meeting of the board of directors on December 15, 1961 supplementary letters patent were issued by the Provincial Secretary of Ontario on February 7, 1962, changing the name of the company from Commodore Portable Typewriter Company Limited to Commodore Business Machines (Canada) Limited and converting it from a private to a public company; cancelling 11,000 unissued preference shares of the 36,000 originally authorized and 2,968 unissued common shares of the original 4,000 and changing the 1,032 common shares of a par value of \$1 each into an equal number of common shares without par value; subdividing these last into 516,000 issued common shares constituting a split of 500 new shares for one of the old; creating an additional 1,484,000 common shares without par value and abolishing the preference share classification entirely; thus leaving it with a capitalization of 2,000,000 common shares with no par value of which 516,000 had been issued and paid for, and poised upon the brink not only of further expansion in manufacturing and sales, but of a stock market operation sufficiently unusual, if unfortunately not unique, to require the taking of measures to make sure that it is not repeated in any similar form in the future. The first public offering of the company's shares was made in June 1962 and consisted

of 300,000 common shares issued out of the treasury, the subject of a prospectus, dated May 31, 1962,¹ offering the shares at \$2.50 each, subject to the approval of the Ontario and Quebec Securities Commissions, and the final acceptance of a listing application to the Canadian Stock Exchange of Montreal. In the event all 816,000 shares were called for trading on July 23, subject to escrow requirements.

The progress of this company from its incorporation in October 1958, and particularly from its beginnings in the Bronx garage from which Jack Tramiel and Manfred Kapp despatched their first repaired and reconditioned typewriters, had been astonishingly rapid. As has been seen in Chapter V, it had grown up under the wing of Atlantic which, through Commodore Sales Acceptance, supplied it with all its funds and owed everything to C. P. Morgan without whose interest and intervention it could not conceivably have survived, at least in the hands of its progenitors.

By December 31, 1961 the company, and its American subsidiary Commodore Business Machines Inc., owed Commodore Sales Acceptance \$954,553, and the latter's American subsidiary, Commodore Factors Limited \$588,831, or a total of \$1,543,384 without allowing for the conversion of loans from Commodore Factors into Canadian funds. By the end of 1962 the debt due to Commodore Sales Acceptance had declined to \$333,563 as a result of the application to it of the whole of the proceeds of the public issue of 300,000 shares; loans of Commodore Factors had risen to \$1,055,388 U.S. funds, and Aurora Leasing Corporation had become a creditor to the extent of \$264,591; yet by June 17, 1965 the debt to Commodore Sales Acceptance was no more than \$302,265, and Commodore Business Machines had actually become a creditor of Commodore Factors for \$442,902. How this was accomplished by an enterprise which could not ever have been considered profitable in the conventional sense of that term, and how Commodore Business Machines survived the collapse of Atlantic, albeit in a form and through means which should ensure for it in the future a public scrutiny of the most searching kind, occupied the attention of the Commission during many weeks of evidence, concerned not only with the fortunes of Commodore Business Machines and its subsidiary and associated companies, but also with the enrichment of Jack Tramiel, Manfred Kapp and, of course, C. P. Morgan.

Structure of the Commodore Group of Companies

The Commission's expert witness on the financial and accounting aspects of the inquiry into the affairs of Commodore Business Machines was Mr. Bertrand Wolfman, C.A., of the management consultants firm

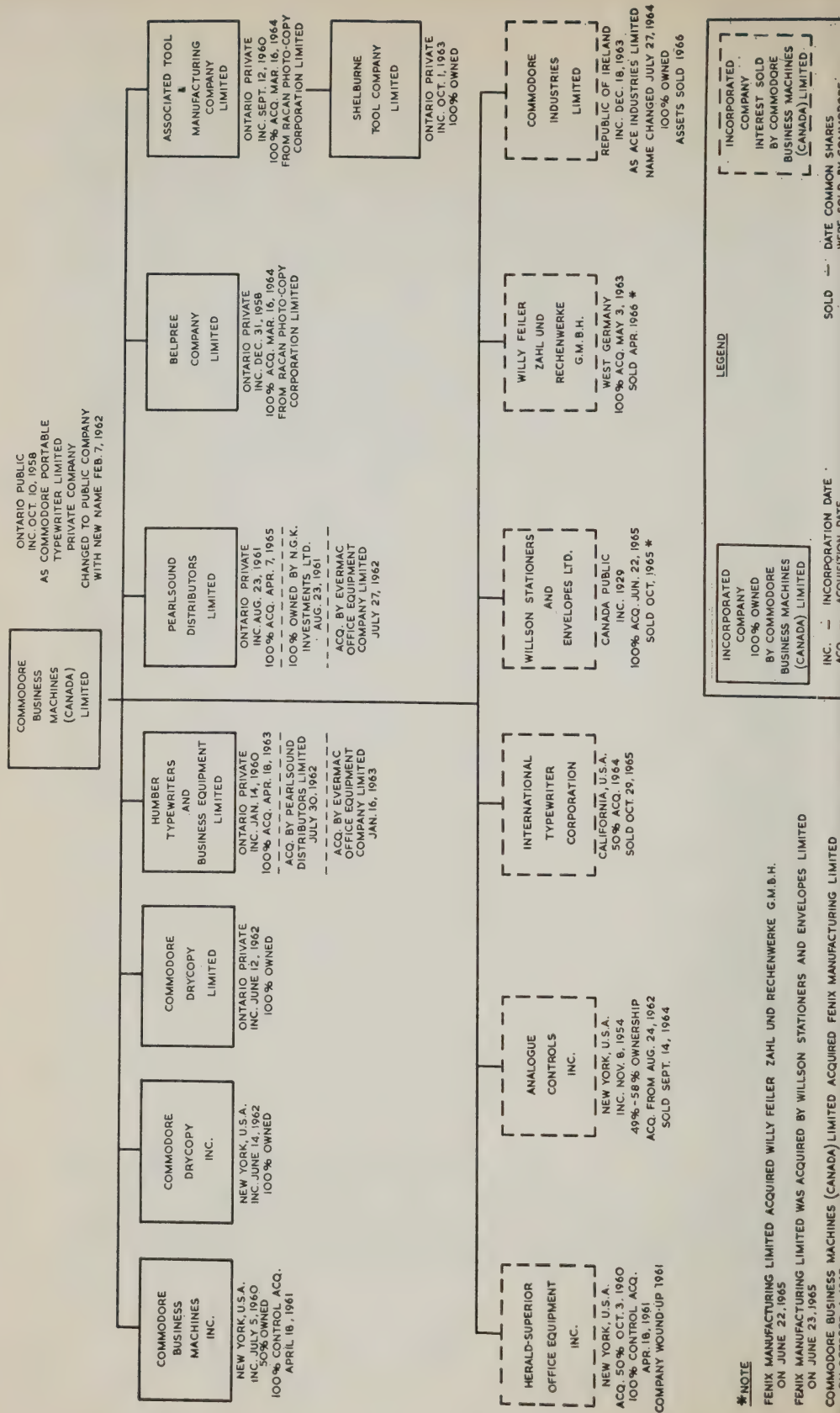
¹Exhibit 345.

of P. S. Ross & Partners, associated with Touche, Ross, Bailey & Smart. Mr. Wolfman began his evidence on May 18, 1966 and was examined by Mr. Shepherd throughout that and the four succeeding days, the transcripts appearing in Volumes 34 to 38 of the evidence, successively and inclusively. The matters dealt with were in part exceedingly complex, and the preparation required to elucidate them by both counsel and witness laborious and prolonged. Associated with and, indeed, inseparable from the affairs of Atlantic and Commodore Business Machines in this branch of the inquiry were those of Analogue Controls Incorporated, control of which was exercised by Commodore Business Machines during a period of two years from August 1962 to September 1964, and which then and thereafter until the spring of 1965 was a borrower of funds which originated with Atlantic Acceptance. For its detailed and expert evidence on the affairs of this company the Commission relied upon Mr. Gerald R. Gillman, C.A., of the Ontario Securities Commission, whose testimony was given on June 14 and 16, 1966 and appears in Volumes 44 and 45. The evidence of many other witnesses given at the public hearings of the Commission, in the course of examinations under the Securities Act by Mr. Cartwright and others, by Mr. Peter J. Adolph of the United States Securities and Exchange Commission, and by various counsel in the course of examinations for discovery in the bankruptcies of many associated companies, the affairs of which were part and parcel of the complicated transactions which must now be dealt with, has been utilized to the fullest extent consistent with the need to keep this narrative within manageable and intelligible proportions.

The corporate structure of Commodore Business Machines, at the time when Mr. Wolfman's evidence was given, is illustrated on a diagram overleaf showing the relationship of the company to its subsidiary corporations, the information about their dates of incorporation or acquisition and the extent to which they were owned and controlled by the parent.¹ Those companies of which it had disposed, either by selling their assets or their shares before the conclusion of the public hearings of the Commission, are distinguished in the diagram by the use of dotted lines. The earlier and, until 1962, the only subsidiary was Commodore Business Machines Inc., incorporated in the State of New York on July 5, 1960, and it in turn created a wholly-owned subsidiary called Commodore Drycopy Inc. on June 14, 1962. The acquisition of Associated Tool & Manufacturing Company Limited, its subsidiary Shelburne Tool Company Limited and Belpree Company Limited, all on March 16, 1964, from Racan Photo-Copy Corporation Limited was achieved for a price of \$300,000. The purchase of Humber

¹Exhibit 2133A.

CORPORATE STRUCTURE



Typewriters & Business Equipment Limited, in a roundabout manner involving a marked escalation in price, will be considered in some detail, as will that of Pearlsound Distributors Limited, and two companies acquired and subsequently disposed of, Analogue Controls and Willy Feiler Zaehl und Rechenwerke GmbH. The last named was an established manufacturer of typewriters and adding machines having its principal works in West Berlin, and was still operated by its founder, Willy Feiler, after its acquisition by Commodore Business Machines in the spring of 1963 for the sum of \$1,000,000. Tramiel's story² was, as already mentioned, that Kapp, on returning from a visit to their Czechoslovakian supplier of typewriters either at the end of 1960 or the beginning of 1961, had stopped in Paris to visit an exhibition of goods in which Commodore Business Machines was interested. There he met a man called Markus, the principal of a company in England called Typewriter Sundries Limited. Markus showed him the "Quick" adding machine which he said was newly available for the North American market. On learning of this, Tramiel went to England to negotiate with Markus for the North American distributing rights of the machine which, because of its efficiency and low cost of manufacture, seemed to be just what Commodore required to establish its reputation in the business machines field. The Quick machine was manufactured by the Willy Feiler company, and Markus had formerly been Willy Feiler's son-in-law. So successful was the new machine that Tramiel visited the plant in Berlin, and pressed for an increase in production which he told Feiler he could readily dispose of. Feiler said he was too old to invest any more of his own money in the business and more would be needed for the increase contemplated. Thus it came about that a close personal relationship, and unusually favourable circumstances, caused Willy Feiler to sell to Commodore Business Machines an operation which commanded the admiration of all who saw it, and knew the quality of its work, for a price which C. P. Margan in particular, as chairman of the board of the purchaser, recognized as being a bargain indeed. Had it not been for the willingness of Litton Industries Inc. to buy the Willy Feiler subsidiary after the Atlantic default, when Commodore Business Machines was faced with insolvency, for more than three times what the latter had paid for it in 1963, providing funds with which some \$2,900,000 worth of debt to British Mortgage & Trust Company could be settled in 1966 for approximately \$1,600,000, redemption of pledged securities could not have been undertaken, and control of their enterprise might have passed out of the hands of Jack Tramiel and Manfred Kapp and their associates into those of the receiver and manager of Atlantic Acceptance.

²Evidence Volume 84.

Financial Statements and the Source of Funds

The audited financial statements of Commodore Business Machines for the fiscal years ended June 30 begin with that for 1961, the terminal date having been changed from January 31 in that year. Reference to the comparative statement of consolidated earnings annexed to the 1962 prospectus, already referred to, shows that the company had a profit of \$4,310 as at January 31, 1960, a loss of \$11,169 during the following year and, for the five months ended June 30, 1961, a loss of \$25,988, and, if depreciation had been taken on tools, dies and moulds at the rate authorized in 1962, losses would have been substantially increased, and the apparent profit for 1960 would also have been converted into loss. A different story was told, however, for the eight months ending February 28, 1962 in which the statements were for the first time shown as a consolidation of those of Commodore Business Machines (Canada) Limited and Commodore Business Machines Inc. They record net income after taxes of \$55,674.¹ Table 36² shows condensed comparative balance sheets, and a comparison between the situation existing at June 30, 1961 and June 30, 1965, only two weeks after the Atlantic default, shows a rise in total assets from \$1,353,000, approximately, to \$8,387,000, a common share investment of \$400 and preferred share investment of \$25,000 (issued to Helen Tramiel and Estelle Kapp for paying the company's original debt to Commodore Sales Acceptance) compared with \$1,263,892 and \$1,000,000 respectively, capital surplus of \$148,594, compared with \$96,305 and retained earnings in a deficit position of \$32,848, compared with a deficit position of \$442,993 in 1965. To produce this impairment of the shareholders' equity there had been an outflow from retained earnings of almost \$900,000 during the year ending June 30, 1965. In addition, there were outstanding convertible debentures and subordinated notes in the amount of \$2,878,500, and the assets included \$1,545,155, described truthfully enough as intangible, the excess of cost of investment in subsidiaries over their book value at the dates of acquisition amounting to \$464,800 and goodwill of the large and doubtful order of \$581,000.

When the story has been told it will be seen that even this equivocal record of financial achievement is largely the product of illusion, and of illusion produced by a ruthless lack of scruple in raising money from the public and in setting the stage from which fresh appeals might be made. A number of schedules were prepared by Mr. Wolfman to illustrate the sources from which Commodore Business Machines received funds, on the one hand by the issuing of shares, debentures and subordinated notes, and on the other by direct loans made against inventory, by factoring accounts receivable and on other security. The

¹Exhibits 353-4.

²Exhibit 2135.

source of funds obtained through the issue of shares, debentures and notes, the distribution of these securities and the amounts realized therefrom by Commodore Business Machines are illustrated by Table 37,³ entitled "Financing of Debt and Equity Issues". The table shows, on the left, the date of issue, the nature of the securities and the names of those purchasers who might now, under current legislation, be described as "insiders" with reference to the succeeding columns which illustrate the sources of their funds, with special emphasis upon loans or investments made by Aurora Leasing Corporation and British Mortgage & Trust Company. It may be noted, in passing, that the first two items, which record private issues of 200,000 and 316,000 shares, refer to occasions before the 500-for-1 split of the original common shares was authorized by the supplementary letters patent of February 7, 1962, and the issues were in fact of 400 and 632 old shares respectively to persons and under circumstances which will be illustrated in a subsequent table and described in the text. Indeed the table as a whole cannot be comprehended until the story unfolds, and it is sufficient at this stage to note that of the net proceeds of \$5,021,000 received by the company from these issues, exclusive of the assumption of share options, the conversion of debentures and the exercise of share warrants which brought the total up to \$5,216,000, the sources of funds contributed by subscribers were Aurora Leasing to the extent of \$1,192,178.60, British Mortgage & Trust Company of \$2,525,000 and others, described as miscellaneous or unknown, of only \$945,213.50. The balance of \$500,000 was contributed by the purchase of \$2,000,000 in subordinated notes and preference shares on December 28, 1964 by Commodore Business Machines itself, by means of a loan made in that amount to Trans Commercial Acceptance Limited, a company owned at the time by Associated Canadian Holdings Limited the shares of which were held equally by Tramiel, Kapp and Morgan and their families, with the exception of a minor interest given by Morgan to Harry Wagman, a part of which, according to his own account, was held in trust for William L. Walton.

Loans from Commodore Sales Acceptance

Bank accommodations played a minor part in the financing of Commodore Business Machines in its early years under Morgan's tutelage, being only \$50,000 by the year ending June 30, 1963, although at the same period of 1965 they had risen to \$663,011. Foremost among the day-to-day lenders of money to the company were Commodore Sales Acceptance and Commodore Factors, both of course deriving their funds from Atlantic Acceptance. The history of operating loans made by Commodore Sales Acceptance to Commodore Business

³Exhibit 2136.

COMMODORE BUSINESS MACHINES

Machines and its associated companies, excluding interest accrued and receivable from October 1961 to June 17, 1965, is illustrated by Table 38.¹ The selection of October 1961 as the starting point for recording loans which, under some categories, originated before that month was explained by Mr. Wolfman as a result of the inadequacy of the accounting records of Commodore Sales Acceptance in its earlier days, which made necessary extensive reconstruction of the accounts by the accountants employed by the Commission and the Montreal Trust Company. The table shows, in columns corresponding to the various ledger accounts of Commodore Sales Acceptance, individual loans and lending operations, the level of the loans month by month between October 1961 and June 17, 1965, first of all in respect of the parent company, Commodore Business Machines, and then in its rightward extension loans of the subsidiaries, Commodore Drycopy Limited and Humber Typewriters & Business Equipment Limited and the associated companies, by virtue of their creation or ownership by Tramiel and Kapp, Evermac Office Equipment Company Limited and Trans Commercial Acceptance Limited. The final columns show total loans by Commodore Sales Acceptance and total loans by it and its American subsidiary, Commodore Factors, added together. The figures in brackets represent a credit position for the borrower particularly applicable to reserve accounts, and the Greek letter Phi indicates that the account has been balanced off or flattened by payment, or by journal entry, in which latter case the initials "JE" appear beside this symbol. The significance of these journal entries will become plain later on, but it will be noted at this point, and indeed not to notice it would be to miss the most obvious feature of the table, that in December 1963 there was a wholesale transfer of indebtedness to Commodore Sales Acceptance from Commodore Business Machines and its subsidiaries to the company called Trans Commercial Acceptance, and a general reduction in interest rates charged for loans made to that company from 12% to 8½%. The effect of this was to substitute as a debtor to Commodore Sales Acceptance a company with no invested capital and no assets, other than its own loans receivable, for a manufacturing company with public status and responsibilities and with substantial assets at the time of transfer, and to deprive Commodore Sales Acceptance and, of course, Atlantic of 3½% per annum of interest for the sake of inferior security and a virtually worthless covenant to repay.

It will also be noted that in June 1962 the amounts due are sharply reduced, and the journal entry records in this case the receipt of funds on the first public issue of common shares by Commodore Business Machines, all of which were paid to Commodore Sales Acceptance. The loans to Evermac Office Equipment are unusual in that they

¹Exhibit 2137.

appear to have been paid directly, by way of further loan, to Commodore Business Machines.

Some comment by the way is required, particularly as the column headings are taken exactly from the nomenclature used in the ledgers of Commodore Sales Acceptance. For example, the second column entitled "holdback reserve" is clearly a reserve for unearned interest in connection with the long-term note receivable originating in November 1961, the amount of which is shown as being systematically reduced right through until June 17, 1965. The column entitled "Kovo account payable 12% credit" reflects the practice of Commodore Sales Acceptance ensuring payment to the original Czechoslovakian supplier to Commodore Business Machines by recording a loan to the latter, and establishing a credit to Kovo to which it actually paid the amounts due.

Loans from Commodore Factors

Table 39¹ is a similar compilation showing the history of operating loans made by Commodore Factors, the American subsidiary of Commodore Sales Acceptance, also with Atlantic money. It will be recalled that the purpose behind the incorporation of Commodore Factors as a wholly-owned subsidiary of Commodore Sales Acceptance in the State of New York was to carry on the factoring and commercial loans business with American borrowers, the funds coming directly from Atlantic Acceptance. Commodore Factors also made loans directly to Commodore Business Machines, but primarily to its American subsidiary and associated companies. The oldest of these was Commodore Business Machines Inc. which was jointly indebted to Commodore Factors together with Herald Superior Office Equipment Company Inc., Commodore Business Machines having a 50% interest in each company until they were eventually merged under the name of the first. Commodore Drycopy Inc. was a wholly-owned subsidiary of Commodore Business Machines Inc., and A.C.E. Business Machines Inc., Jay-Man Distributors Inc. and Baronet Associates Inc. were companies apparently owned by Tramiel and Kapp. Commodore Factors lent money to Jay-Man Distributors to buy goods from Commodore Business Machines in a transaction similar to the loans made by Commodore Sales Acceptance to Evermac Office Equipment. Finally there is the same significant transfer by journal entry, in June 1964, of all the outstanding indebtedness of these companies in consolidated form to Baronet Associates Inc. which thereafter pays interest at the rate of 8½% per annum instead of 12%.

The general effect of these tables is to show that by June 17, 1965 Commodore Business Machines owed directly to Commodore Sales Acceptance the amounts payable in respect of a long-term note

¹Exhibit 2138.

COMMODORE BUSINESS MACHINES

receivable and the 12% instalment notes transferred at the beginning of 1963 from Commodore Factors, which were, in the aggregate, some \$328,872, and from which must be deducted \$26,600 by way of holdback reserve. It owed Commodore Factors nothing. Interposed between the real debtors of the Commodore Business Machines group and their Atlantic creditors were Trans Commercial Acceptance in the case of Commodore Sales Acceptance, and Baronet Associates in the case of Commodore Factors, owing almost all the combined loans of \$2,039,753.75 as at June 17, 1965. The high point of these loans had been reached in November, 1964 at a figure of \$3,114,655.94, but in the following month it had declined to \$1,301,451.93 as a result of a breathtaking transfer of the burden to British Mortgage & Trust Company in a series of transactions which must await more detailed examination. A graphic depiction of the pattern of the borrowing of the Commodore Business Machines group can be seen opposite,² which shows how the rising curve of indebtedness to Atlantic companies was arrested by payment over of the proceeds of public issues and private placements of shares, debentures and notes referred to in Table 37, generally, if not always with an eye to the year-end statement at June 30, and in December, 1964, at least, with an interim six-month statement in mind.

The Investment of British Mortgage & Trust

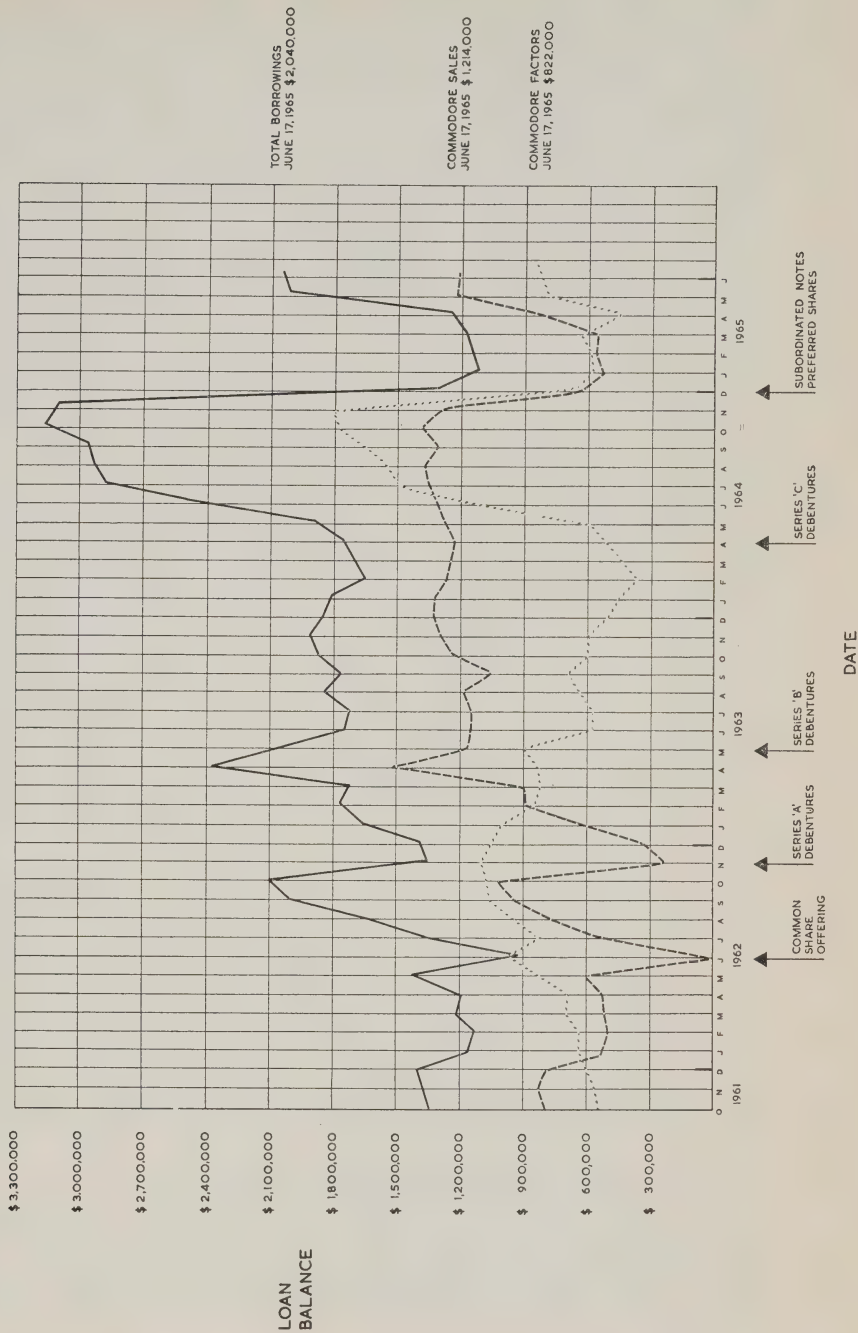
Wilfrid P. Gregory became a director of Commodore Business Machines on November 20, 1963. He testified¹ that he had high hopes for the company, which had just finished purchasing and making a payment on the Willy Feiler operation and was also setting up a plant in Ireland with, as he said, the help of British Mortgage & Trust, and indeed by that time the trust company had a substantial interest in the securities of Commodore Business Machines, either by way of direct investment or of loans made to persons who had borrowed from it to invest in these securities and had pledged them. The investment began with a purchase of common shares in the first public offering of June, 1962 for \$25,000, and its progress may be observed on Table 40² which illustrates the British Mortgage & Trust position from that time until May of 1965. The first two columns record the investments by British Mortgage & Trust in common shares and Series "A" debentures which by May of that year amounted in the aggregate to \$252,469. The rest of the table shows loans made to companies and individuals secured by Commodore Business Machines securities, and it will be observed that Annett Partners Limited were indebted in the amount of \$100,000 from April to December, 1963, Carman King, Douglas Annett

²Exhibit 2139.

¹Evidence Volume 116.

²Exhibit 2140.

COMMODORE BUSINESS MACHINES (CANADA) LIMITED AND ITS AFFILIATED COMPANIES THE PATTERN OF BORROWING FROM THE ATLANTIC GROUP FROM OCTOBER 1961 TO JUNE 17, 1965



COMMODORE BUSINESS MACHINES

(both Annett partners), Manfred Kapp, Harry Wagman, W. L. Walton and C. P. Morgan in the amount of \$500,000, which in March of 1964 was transferred to Jack Tramiel and Messrs. Kapp, Morgan, Wagman and Walton, was again transferred in April, 1965 to Messrs. Tramiel, Kapp, Morgan and Wagman and remained outstanding at the end of the period. Alan T. Christie borrowed \$55,000 in December 1963 which was paid off a year later; Chisholm & Co., which was Lambert & Co., borrowed \$240,000 in March, 1964 and repaid the loan in November, and Associated Canadian Holdings \$200,000 in April 1964 which was still outstanding in May, 1965. So it was with N.G.K. Investments in the amount of \$250,000. By far the largest of the loans made on this basis was that of \$1,500,000 to Trans Commercial Acceptance in December, 1964 which, with a loan of \$500,000 from Commodore Business Machines itself, enabled it to purchase the whole private placement of \$1,000,000 6¾ % subordinated note and \$1,000,000 6% preferred share issue of Commodore Business Machines, referred to in Table 37. By the end of May this loan had been reduced by only \$50,000, so that the total loans and investments secured by the shares and obligations of Commodore Business Machines amounted at that time to \$2,652,469, of which \$2,400,000 were loans secured by their pledge as collateral. Two points should be remarked upon. The additional \$182,500 invested in common shares of Commodore Business Machines in December, 1964 represented a purchase from C. P. Morgan himself. These were sold, according to Gregory, under an informal verbal agreement reached when he, already a shareholder, had indicated British Mortgage & Trust would be interested in buying in the then rising market, and Morgan had said that, since he was buying himself, he would let British Mortgage have half his purchases at his own average price. As will be seen, Morgan was at this time a seller rather than a buyer, and eventually British Mortgage held as owner, or in pledge, some 20% of the common stock of Commodore Business Machines at an average price of \$6 per share. Table 40 does not show a large loan made to Morgan, because the securities lodged as collateral included those of Commodore Business Machines with others, and Mr. Wolfman considered it neither practical nor fair to include it, since he was unable to ascertain what value British Mortgage attached to some 16,000 common shares with a market value of approximately \$100,000 when they were first lodged as security.

The Price-Earnings Ratio of Common Shares

Another illustration is required to show at this point, and for future reference, what information was available to lenders enabling them to decide what a proper collateral value for Commodore Business Machines securities should be, and this may be found at Table 41¹ showing

¹Exhibit 2141.

information taken from the financial statements of Commodore Business Machines, and the average price per share from year to year, derived from evidence submitted by the Canadian Stock Exchange,² which permits comparison of market price with earnings per share. This table, like its predecessors, considers all share values in the light of the 500-for-1 split in the common shares authorized by the supplementary letters patent of February 7, 1962. As at January 31, 1961 the net book value per share was \$1.44, and by June 30, 1961, the end of the six months period reported consequent upon the change of the fiscal year-end, had dropped to 58¢ because of the issue of an additional 100,000 shares at a fifth of a cent a share. At June 30, 1962 the book value per share was \$1.40, and at the same time in 1963, \$1.58 and in 1964, \$1.85; but at June 30, 1965 it was \$1.18, the earnings per share being in a loss position of \$1.063. Earnings per common share were reported at the year ending June 30, 1962 as 18.5¢, June 30, 1963 as 17.5¢ and at June 30, 1964, 22.8¢. Comparing earnings per share, even as reported, with market price, it appears that during the year ended June 30, 1963, the first in which a market price is applicable, the stock traded from a low of \$2.70 to a high of \$4.75 per share, and the market price varied between an equivalent of 15.4 and 27.1 times earnings. For the next period, ending June 30, 1964, the ratio varies between 16 and 22 times earnings. As has been observed, at June 30, 1965 a loss of \$1.063 a share was recorded, although during the period the stock traded between a low of \$4.10 and a high of \$10.50 up to June 15, 1965, and thereafter declined to a low of \$1.10 on July 14. Thus, at a high point in price of \$10.50 per share, the market was apparently willing to pay, based on the last financial reports available of June 30, 1964, as much as 45 times earnings for Commodore Business Machines common stock.

Directors and Officers

Before beginning a detailed examination of how Atlantic funds were injected into Commodore Business Machines, and the extent to which the public in fact participated in its financing, it may be convenient to notice the names of the directors and officers who presided over the destinies of the company from the date of incorporation on October 10, 1958 at least until the end of June, 1965, when it passed out of the orbit of the Atlantic complex. The first four directors elected on October 10, 1958, and retiring on November 5, were clearly the incorporators, Wolfe David Goodman and Robert Bernard Eisen, being solicitors, and Edith Bateman and Alma Jane Paulson, being clerks in their office. They were succeeded on November 5 by Helen Tramiel, Estelle Kapp, Jack Tramiel and Manfred Kapp, the last two remaining as directors

²Exhibit 2132.

throughout the period. On October 3, 1960, the date of an important directors' meeting, Mrs. Tramiel and Mrs. Kapp resigned, the vacancies being filled by J. Aubrey Medland and Carman G. King and additional directors appointed in the persons of C. William Streit and Harry Wagman. Carl M. Solomon, of the company's solicitors, Messrs. Solomon, Singer & Rosen, was added to the board at an equally important meeting on December 15, 1961. On May 31, 1962 Medland resigned in a moment of disenchantment, so that his name does not appear on the prospectus as of that date advertising the first public issue of common shares. He was succeeded by Benjamin H. Oremland, the New York attorney introduced by Carl Solomon to the Atlantic scene, who had incorporated Commodore Factors in June 1961, and who acted for Commodore Business Machines in the transaction of its American legal business. Oremland made room for the return of Medland as a director on October 17, 1962, and on the same day there were elected Fenimore Fisher, general manager of Analogue Controls Inc., C. Powell Morgan and Douglas R. Annett, a vacancy having been created on August 9, 1962 by the resignation of Streit and two more by enlargement of the board to nine on October 17. Annett resigned on November 20, 1963, being replaced by another stockbroker, Rennie A. Goodfellow, and, as has been seen, Wilfrid P. Gregory also joined the board on that date. King, Morgan, Medland and Gregory all resigned on June 22, 1965, a week after the Atlantic default, leaving Tramiel, Kapp, Wagman, Solomon and Goodfellow in office. During their terms as directors Mrs. Tramiel was president and Mrs. Kapp secretary-treasurer of the company; they were succeeded by their husbands on October 3, 1960, Medland, King and Streit becoming vice-presidents at that time. This appointment as vice-president, which Medland said had been conferred upon him without his knowledge, was at least the ostensible reason for his resignation from the board on May 31, 1962.¹ He was succeeded in office by Harry Wagman, who on November 20, 1963 also became treasurer and assistant secretary, Kapp becoming a vice-president on the same date. The office of vice-president was also conferred on Fisher, and when Morgan became a director on October 17, 1962, he assumed and held thereafter until his resignation the position of chairman of the board.

Early History of Common Share Transactions: The Purvin Agreement

The motives of the prime movers in the affairs of Commodore Business Machines, and the scale of their operations, can only be fully appreciated by an examination of the transactions in the company's shares. Although many of these were so conducted as to give at least a false appearance, and at most complete concealment of their real

¹Evidence Volume 92.

nature, the records available will appear to be voluminous. A start may be made with the corporate records of the company, and here it should be said that the minute books of Commodore Business Machines,¹ and particularly of the period during which it was known as Commodore Portable Typewriter Limited, bear traces of altered dates and other corrections of the record, and cannot be regarded as entirely reliable. However they are what they are, and no one can complain, particularly those responsible for them and for the state in which they were examined by the Commission, if inferences are drawn from what they purport to say. The assistance of yet another table must be invoked to illustrate what follows and to make it intelligible. This is Table 42,² described as a "history of common share transactions from incorporation to the date of the first common share underwriting." It shows on the various dates the numbers of shares issued and transferred from November 5, 1958 to just before this issue, the total shareholdings, the total amount paid and the price per share opposite the names of the principal shareholders, most of whom will be familiar to the reader. In the beginning, on November 5, 1958, the minute book and share certificate book of Commodore Portable Typewriter record the issue of 99 common shares to Helen Tramiel, 99 to Estelle Kapp and one share each to Jack Tramiel and Manfred Kapp, a total of 200 shares which the books of account record as being paid for in the amount of \$200. Thus the situation remained until October 3, 1960, these four persons being all the directors and, indeed, all the shareholders of the company, and only two meetings of the board intervened, one on March 21, 1960 and one apparently on June 17, 1960, if the obviously altered date is to be relied upon, in conjunction with the annual meeting on the same day. On October 3 a number of important decisions were taken by the board and are recorded in a lengthy minute. The meeting was attended by all the directors, and by Messrs. C. Powell Morgan, H. Wagman and D. M. Samuel at the invitation of the board. Mrs. Kapp on that occasion resigned as a director, and assigned her 99 common shares to the following transferees in the indicated amounts:

Carl M. Solomon	23
J. Aubrey Medland	20
Harry Wagman	20
C. William Streit	15
C. Powell Morgan	10
David M. Samuel	3
Carman G. King	8

Mrs. Tramiel also resigned as a director and transferred her 99 shares to C. Powell Morgan, who thereupon declared that he held the 109

¹Exhibits 322 and 342-4.

²Exhibit 2142.

common shares thus acquired in trust for Jack Tramiel as to 36, Manfred Kapp as to 36 and Regina Silberman as to 37. J. Aubrey Medland, Carman G. King and C. William Streit then were appointed directors to fill the two vacancies created, and to comply with a special resolution increasing the number of directors from four to six.

It may be noted parenthetically, and at the risk of a digression from the theme of share transactions, that at the same meeting a floating charge debenture to secure repayment to Commodore Sales Acceptance of sums advanced, or to be advanced, up to \$500,000, with interest at the rate of 15% per annum, was also authorized, but it transpires from the minutes of a meeting purportedly held on January 6, 1961 that no such debenture had been executed, and that the company was, as of that date, indebted to Commodore Sales Acceptance in the amount of \$877,-588.47. In the event such a debenture, to secure repayment of \$1,200,000, was again authorized and an unexecuted copy thereof annexed to the minutes. The fact that on this occasion the affidavit of bona fides was prepared for the signature of C. P. Morgan, as president of the "mortgagee", is reassuring in view of the trouble laid up for himself by Carl Solomon shortly after, on December 21, 1960, when he annexed to an assignment of book debts in favour of Commodore Sales Acceptance by Aurora Leasing Corporation an affidavit by himself as president of the assignor, thus imperilling the whole security. Ratification was also given to an agreement between Herald Square Business Machines Inc., Superior Typewriter Co. Inc., Commodore Portable Typewriter, George Purvin, Jack Tramiel, Manfred Kapp and Commodore Sales Acceptance, already executed and dated June 28, 1960, whereby the company acquired the business of two New York companies, called Herald Square Business Machines Inc. and Superior Typewriter Co. Inc., in which one George Purvin had an interest. The agreement, an unexecuted copy of which is annexed to the minutes, is lengthy and involved, but the gist of it is that Herald Square and Superior Typewriter were to be wound up after Purvin had acquired the remaining shares from members of his family for \$25,000, to be advanced to him by Commodore Portable Typewriter, and that two new companies were to be incorporated, one called Superior Typewriter Sales Inc. (which in fact became Herald Superior Typewriter Sales Inc.) and Commodore Business Machines Inc., both in the New York State jurisdiction, that the inventory of Herald Square and Superior Typewriter was to be transferred to Herald Superior, and certain leases of store space which the two existing companies had in American department stores, such as Macy's and Bamberger's, should be assigned to it, and that Commodore Business Machines Inc. should act as the exclusive agent for Commodore Portable Typewriter for the sale of the latter's products to dealers in the United States, including Herald Superior, and finance its inventory purchases. The shares of the two new companies were to

be owned equally by George Purvin and Commodore Portable Typewriter, Purvin's shares to be lodged with the latter as security for the repayment of a loan of \$25,000; loans to the new companies were to be arranged for by both Purvin and Commodore Portable Typewriter, and Commodore Sales Acceptance, somewhat quaintly called the "comp-troller", was "to render financial and administrative advice and assistance" to the New York companies, and to Commodore Portable Typewriter, for an annual fee of \$10,000.

Minutes of a directors' meeting held on April 18, 1961, and attended only by Jack Tramiel, Manfred Kapp and Harry Wagman, contemporaneous as will be recalled with the transactions whereby Atlantic Acceptance Corporation acquired entire ownership of its subsidiary Commodore Sales Acceptance, begin with the authorization of the issue, as fully paid and non-assessable, of 25,000 preference shares to Benjamin Silberman as to 6,666 shares, Helen Tramiel as to 9,167 and Estelle Kapp as to 9,167, for which \$25,000 is recorded as having been paid. This issue was made to pay the company's debt to Mrs. Tramiel and Mrs. Kapp, arising from the purchase of their common shares of Commodore Sales Acceptance for \$25,000 by C. P. Morgan, and the crediting of the amount of the purchase price to Commodore Portable Typewriter as part of a \$50,000 credit, for which Manfred Kapp directed journal entries to be made recording that his wife and Tramiel's had paid a debt of the company to Commodore Sales Acceptance, and were in consequence creditors.³ The issue at this time to Benjamin Silberman is unexplained, except as a settlement of a debt to this relative of Jack Tramiel by the Tramiel and Kapp families. The minute proceeds to record the authorization of an agreement, dated 18 April, between Commodore Portable Typewriter and George Purvin, providing for the purchase by the company of the latter's 50% interest in the stock of Herald Superior Office Equipment Inc. and Commodore Business Machines Inc. for 200 of the company's common shares, at their par value of \$1 each, which were to be allotted to C. P. Morgan in trust by the terms of a second agreement, whereby Purvin, Morgan and the company agree that they shall be so held until Purvin pays his debt of \$25,000. An unusual provision of the second agreement is that Purvin will be at liberty to sell or transfer half of the 200 common shares to such persons as he may, in his sole discretion, designate. Both these agreements are annexed to the minutes in their original and executed form. Then on April 25, according to the company's records, the same three members of the board who had been present on April 18 met again, and authorized the transfer of 100 common shares of the company's capital stock from C. Powell Morgan in trust to C. Powell Morgan. Annexed to the minute of this meeting is an original executed agreement between

³Evidence Volume 87.

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George Purvin and C. Powell Morgan, providing for the sale by Purvin of 100 shares to Morgan for the sum of \$1. Significantly enough, this agreement is also dated April 18, 1961.

Both Purvin and Tramiel have described the transaction, the former in an examination under the Securities Act⁴ and the latter in his evidence given before the Commission.⁵ In short, Purvin received 50% of the shares of the parent company in exchange for 50% of the shares of the subsidiaries, Herald Superior and Commodore Business Machines Inc., and immediately transferred half of them to Morgan. Morgan thereby received 25% of Commodore Portable Typewriter for nothing. Purvin said that at no time did he think he was to get any more than 25% of the common stock of Commodore Portable Typewriter, in spite of the requirement to pledge what was in fact 50% of the outstanding shares, and he paid little attention to the formalities of his agreement with Morgan who had always been charming and kind to him, and played the rôle of pacifier in the many disputes which had arisen between him and Tramiel and Tramiel and Kapp. He was at this time disillusioned about his business association with Tramiel whom he had known in the typewriter business since 1959. He knew that the Herald Superior business was losing money, and he objected to Tramiel's reckless expenditure on advertising.

His account given on oath of one example of Tramiel's business methods should be reproduced.⁶

"A. And then one fine day a cheque was put in front of me to sign for Income Tax. I don't recall the exact amount, but it was in three figures. The figure of around \$3,000 or \$3,500 comes back to me, but I couldn't be sure that that was the amount. I demanded to know 'How come we are paying Income Tax when we are losing money' and the conversations were that this is the way it worked out, and I took the physical inventory myself, and that if you add it up it comes out that way.

Q. With whom did you have this conversation?

A. With Jack.

Q. Tramiel?

A. Yes.

Q. Yes?

A. And I went into the office and took out the physical inventory sheets, yellow sheets, pages and pages and pages of them, and some of the figures that I had put in were changed to higher figures.

Q. How was this done?

A. I beg your pardon?

⁴Exhibit 4890.

⁵Evidence Volume 84.

⁶Exhibit 4890, p. 25.

Q. Was it done by adding a zero, or what?

A. No. You could see my numbers where I had taken these sheets and valued the items one by one, and then you could see—I did it in pencil, and it was erased and another figure was put in.

Q. Approximately what amount?

A. Well, I was speaking of specific items. One item in particular was the Remington electric typewriter which, as regards that particular model, had certain mechanical defects which made the sale very difficult. Nevertheless the allowance for the machine—do you understand what I mean by ‘allowance’?

Q. No.

A. That is what the manufacturer will pay in trade if you buy a new one from him.

Q. Yes?

A. So the manufacturer’s allowance is sometimes lower, is sometimes higher and is sometimes about the same as the wholesale market value. The factors of supply and demand operate here, but not in cases where you have a defect, where the machine is not saleable; but the manufacturer, Remington, could not very well say ‘Our machine is no good so we will not give you anything back for it when you take it in trade’. Do I make myself clear?

Q. Yes.

A. There were quite a number of those machines and I had to value them. I think I put them in for \$15 apiece when the allowance was possibly \$100, or in the case of a high serial number it could have been even higher; but on the basis of cost or market, whichever is lower, to have put them in at any higher figure than that, I felt would have been fooling ourselves. Being in the used machine business for so many years, it has always been the policy of people in the used machine business to value inventory low; it is almost a reserve that you set up there for such things as new models obsoleting other items. It is a kind of junk business when you get right down to it, and where I saw the figures changed I was much upset on that.

Q. You had valued them at \$15 each. To what amount were they changed, do you recall?

A. I think it was over \$100.

Q. How many machines?

A. A couple of sheets of them.

Q. Is this a hundred or more?

A. Yes, I would say about a hundred machines. I don’t recall offhand. Actually at the time I didn’t sit down to see what the difference in value was. I didn’t care any more—just the whole idea of my valuing an inventory and then having it changed and not being told about it, just further confirmed the idea in my own mind that I wanted to get out.

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Q. Did you call this change to Mr. Tramiel's attention?

A. Yes, I did.

Q. What did he say?

A. He said: 'Look at the allowance, George', and then I began to scream to Mr. Morgan. I mean, this was no roundabout matter. I just directly, in front of Jack, told Mr. Morgan that if I have any responsibility, in his mind, for him to get back his money, I want him to sit down and let us untangle this thing and see what is what. 'The firm is definitely losing money, and I don't want to be the President of a company that is losing money', were my actual words.

Q. What did Mr. Morgan say?

A. I am hesitating because I had many conversations with Mr. Morgan about this particular situation. The conversation which stands out in my mind is a conversation I had with him when I took him back to the Hotel Park Sheraton and put it on the basis that I would defer to his judgment on this thing, and is there anything wrong with my thinking, am I looking at this thing upside down, and so on. He said to me at that time that he much appreciated my keeping him advised on all of these matters, and I agreed at the time to send him monthly reports of how the operations were progressing, and he said: 'George, Jack Tramiel has a way of going into places where angels fear to tread and coming home with the bacon'."

Tramiel, in his evidence given on oath before the Commission on November 30, 1966, said that he knew nothing about the separate transaction between Purvin and Morgan whereby the former conveyed 100 shares to the latter for \$1, although he had agreed that the minutes of April 25, 1961, signed by himself and Kapp, recorded it. He trusted Morgan and thought that he only wanted the shares for additional security. He knew nothing about it, and he agreed that, if the shares were for Morgan personally, the transaction was improper. He could not suggest any reason why Morgan would take the shares in his own name, having previously held them in trust, if it were not to assert his own personal ownership in them. On being shown by counsel a copy of a letter from Morgan taken from the files of Solomon & Samuel, dated April 25, 1962 and beginning "Dear Jack and Manny", acknowledging that he held certificate No. 26 for 100 shares for himself, Tramiel and Kapp as beneficial owners in the proportion of 33⅓ shares each,⁷ he admitted that his understanding of the transaction, when all was over and done with, was that he, Kapp and Morgan each held a one-third interest in 109 shares, and a one-third interest in 200 shares, out of the 400 issued common shares of Commodore Business Machines. The letter should be quoted in part:

"I, the undersigned hereby acknowledge the following:

(a) I presently have in my possession 2 share certificates issued to C. P. Morgan, in Trust, by Commodore Business Machines (Canada)

⁷Exhibit 2146.

Ltd., for (#11) 99 and (#21) 10 shares respectively. I hereby acknowledge that I am holding the said Certificates for the following individuals:

Manfred Kapp	36 shares
Helen Tramiel	36 shares
Benjamin Silverman	37 shares

The ownership of these shares was previously set forth in a written agreement between the parties.

(b) I also have in my possession share certificate #24, issued by Commodore Business Machines (Canada) Ltd., to C. P. MORGAN, in Trust, for 100 shares of stock. I hereby acknowledge that the stock represented by the said Certificate is beneficially owned as follows:

Manfred Kapp	33 $\frac{1}{3}$ shares
Jack Tramiel	33 $\frac{1}{3}$ shares
Mildred Morgan	33 $\frac{1}{3}$ shares

(c) I hereby further acknowledge that I presently also hold Certificate #26, issued by Commodore Business Machines (Canada) Ltd., to C. P. MORGAN for 100 shares. The stock represented by the said Certificate is beneficially owned as follows:

Manfred Kapp	33 $\frac{1}{3}$ shares
Jack Tramiel	33 $\frac{1}{3}$ shares
C. Powell Morgan	33 $\frac{1}{3}$ shares"

The beneficiaries of the 109 shares had been apparently changed from Regina Silberman to Benjamin Silberman in respect of 37 shares, and from Jack Tramiel to Helen Tramiel, in respect of 36 in the record of these holdings in the minutes of October 3, 1960.

With Tramiel's recollection thus refreshed, the examination proceeded as follows:⁸

"MR. SHEPHERD: But your recollection does not extend, I take it, to the manner in which Mr. Morgan acquired those shares from Mr. Purvin on the very day that Commodore Portable Typewriters issued 200 shares for Mr. Purvin's interest in the subsidiary, is that correct?

A. That's right.

Q. And Mr. Purvin never told you about any such arrangement, is that so?

A. That's right.

Q. Mr. Morgan never told you, Mr. Kapp never told you?

A. Not that I can recall.

Q. Can you assist us at all as to why Mr. Solomon, perhaps you can't, would have in his files a copy of such letter?

⁸Evidence Volume 84, pp. 11415-22.

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A. Maybe Mr. Kapp asked him for it, I didn't live in the United States at that particular time.

Q. So . . . ?

A. I am sorry, I lived in the United States at that time and this was written here to our Canadian office and I wasn't following up what correspondence there was from the solicitors.

Q. And Mr. Tramiel, we have it quite clearly, do we not, upon your oath that you knew nothing about the transfer of those 100 shares to Mr. Morgan contemporaneously with the issue of the 200 shares to Mr. Purvin?

A. To answer your question I don't recall anything about those 100 shares at the present moment.

Q. Is that a little different from what you told me before?

A. I don't think so.

Q. You mean you may have known at the time and forgotten about it since?

A. The way you are putting it to me you know this is a number of years and the way you are saying if ever, to me it wasn't important at all because I always look at the last figure, I knew that I had a third of 200 shares. I trusted Mr. Morgan. I never had any doubts that he wants to do something that isn't right, even if he did mention to me which I don't remember at the present time I wouldn't even—it wasn't important to me.

Q. Surely, Mr. Tramiel, if your company, which was not then wholly owned by you three, if you had 200 shares upon the representation that number of shares, being 50% of the issued capital, was required to be issued to acquire an asset of Mr. Purvin's and you had known at that time that Mr. Purvin would immediately give up for one dollar half of those shares that would have stuck in your mind, would it not?

A. It would.

Q. Yes. Is there anything more at all that you can tell us respecting the acquisition of the 200 shares by yourself and Mr. Morgan and Mr. Kapp so far as we have gone up to the moment?

A. No.

Q. Now, you said that you and Mr. Kapp and Mr. Morgan paid \$25,000 to Commodore Portable Typewriters in satisfaction of Mr. Purvin's debt respecting what we now know to be a—though you have stated that you thought—we now know to be 100 shares and you have stated you believe it to be 200 shares, you said that you paid it, is that correct?

A. I believe we did.

Q. Where did you get the money to pay it?

A. Must have been borrowed from Commodore Sales Acceptance.

Q. Do you recall whether you and Mr. Morgan and Mr. Kapp borrowed the money from Commodore Sales Acceptance?

A. I don't recall.

Q. I should, in fairness, tell you, Mr. Tramiel, that those shares were in fact treated as having been paid for by Mrs. Kapp and Mrs. Tramiel, does that assist you at all?

A. No.

Q. Just while we are on that point, may we safely take it that where shares stand in the names—or shares of Commodore Portable Typewriters or Commodore Business Machines stand in the name of Mrs. Kapp and Mrs. Tramiel that you and Mr. Kapp are respectively the beneficial owners of them, is that correct?

A. Yes.

Q. The books indicate, Mr. Tramiel, that these moneys were received or are recorded as being received in American funds, does that assist you at all? \$16,000 of these moneys were recorded as having been received in American funds?

A. I don't know.

Q. Is it your position then, Mr. Tramiel, that Commodore Portable Typewriters was repaid in respect of the Purvin loan, that so far as you personally are concerned, your recollection is that at least your share of the moneys paid on behalf of Mrs. Tramiel were borrowed, but precisely the source from which they were borrowed, you cannot now recall?

A. This is about correct. I believe it was borrowed.

Q. Yes. Do you recall whether it was borrowed from Commodore Business Machines Incorporated?

A. No, definitely wouldn't be borrowed from Commodore Business Machines.

THE COMMISSIONER: I beg your pardon?

A. It wouldn't be borrowed from Commodore Business Machines.

MR. SHEPHERD: Do you recall whether the loan, from whatever source it was borrowed, was ever repaid by you and Mr. Morgan and Mr. Kapp or your wives?

A. It must have been repaid.

Q. Do you have a recollection of repaying it?

A. The exact dates, no I don't, but I know everything we borrowed we have paid back and I don't recall exactly when it was borrowed or when it was paid back.

Q. Is there anything more you can tell us on the 200 shares issued to Mr. Purvin or do we have the whole truth from you?

A. I have a letter here—was confirmed to Mr. Kapp.

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Q. Yes?

A. From Mr. Oremland.

Q. Yes?

A. On October 20th, 1961, where it specifically states that for the \$25,000 Mr. Purvin will resign from Commodore Portable Typewriters, turn over all the shares, etc., etc., nothing to do with the 100 shares but all the shares.

Q. Well, just grant me a moment.

A. And it is important here also it states Mr. Purvin's shares are now being held by Mr. Morgan.

Q. Is that a letter of the 20th of October, 1961 addressed to Commodore Portable Typewriters from Mr. Oremland?

A. Yes.

MR. SHEPHERD: Yes, he refers, Mr. Commissioner, the witness is referring to a copy of Exhibit 2145.

Q. I show you, is there something you wish to say about that, Mr. Tramiel?

A. And also enclosing here the original resignation and showing the shares originally owned by Mr. Purvin were being held by Powell Morgan.

MR. SHEPHERD: Now, could I have 2144, please?

Q. Let me show you a letter to Mr. Purvin, Exhibit 2144, dated the 9th of October, 1961, relating to this transaction purporting to be signed 'Jack Tramiel'. Is that a letter sent by you?

A. Signed by me.

Q. Signed by you, yes, and the first part of the letter reads:

'My dear Mr. Purvin:

We hereby acknowledge our understanding and agreement to the following effect:

Factual Background

You, heretofore, were the owner of 25% of the issued and outstanding stock of our Corporation. You are indebted to our Corporation for the sum of \$25,000.00 which obligation was heretofore evidenced by a negotiable promissory note. The stock owned by you in our Corporation was put up in escrow with C. Powell Morgan as escrow agent as collateral security to secure payment of the obligation due to us under the aforesaid note.'

And then the letter goes on to deal, does it not, with how Mr. Purvin's interest will be purchased in return for the cancellation of Mr. Purvin's note of \$25,000?

A. Yes.

Q. Is that correct?

A. Yes, the letter was signed by me.

Q. If you thought that you were dealing with 200 shares of Commodore Business Machines of which there were then 400 outstanding, why do you open your letter:—

‘You, heretofore, were the owner of 25% of the issued and outstanding stock of our Corporation.’

A. Because of this document, I am almost sure, must have been prepared by our attorney and I didn’t even check the percentage.

Q. But you signed it, Mr. Tramiel?

A. I did, I did.

Q. So on the 9th of October, you are offering to buy 25%, this is the interest you heretofore held for Mr. Purvin, but you assert that really you believed there was still, beneficially owned by him and available for sale by him on that day, 200 shares which is 50%, is that correct?

A. Yes.”

Carl Solomon testified that he had been instructed to draw the agreement between Purvin and Morgan, and the minutes which approved the transfer of 100 shares for \$1, and agreed that, since all the agreements which he had drawn in the Purvin affair had the same date, they represented one transaction. His instructions came from Morgan, Tramiel or Kapp, but he did not recall from which one of them specifically, or what the intention of the parties was at the time. Manfred Kapp, whose evidence was throughout more straightforward than that of Tramiel, although on some points not necessarily more credible, recollected the transaction clearly,⁹ but did not remember playing any particular part in the negotiations with Purvin, even though in the minutes of April 18, 1961 he was recorded as having presented it to the board of directors. He explained this by saying that Morgan was always the hidden presence at these meetings, although he was not then a director, and that it was his presentation which was attributed by the draftsman to Kapp. He recalled the agreement between Purvin and Morgan, and acknowledged that the directors’ meeting of April 25 must have occurred because he had signed the minutes, but he went on to say that in his opinion this was just a formality undertaken to fulfil some whim of Morgan’s. He had always felt that George Purvin was beneficially entitled to 200 shares.

Morgan, Tramiel and Kapp Hold 25% of Commodore Portable Typewriter

The significance of this transaction, which was not apparent to Purvin, but which, in my view, was thoroughly understood by Morgan, Tramiel and Kapp, was that 25% of the issued common shares of Commodore Portable Typewriter found its way into the hands of these three

⁹Evidence Volume 88.

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without costing them even the dollar that was represented to have been paid, and without the knowledge of any of the directors except Tramiel, Kapp and Wagman, who alone were present according to the record at the meetings of April 25 and April 28. To be sure King, Streit and Medland, on pieces of paper in the minute book oddly different in colour to those of the minutes themselves, waived notice of these meetings and consented to their being held and to the transaction of such business as might come before them. The irregularity, and indeed the fraudulence of the whole affair is aggravated by the failure to disclose its true nature in the prospectus of the 300,000 common share public offering in the following year, a failure indeed which, because the company itself was not involved in the transaction between Purvin and Morgan, was not technically in breach of the Securities Act of Ontario as it was then constituted. Purvin, after a final argument, withdrew in disgust and alarm from his association with Commodore Portable Typewriter on October 9, 1961, as was reported to the company by Benjamin Oremland in a letter dated October 20.¹ For the cancellation of his note for \$25,000 he delivered up his interest in the 100 shares still held in trust for him by C. P. Morgan, and Oremland advised Commodore Portable Typewriter that it should obtain a release of these shares from Morgan, attach Purvin's assignment to them and transfer them on the books of the company into the category of treasury shares. Oremland was not, of course, aware that in Ontario a company could not buy back its own shares, and this part of the transaction was eventually recorded as having been arranged by a loan from Mrs. Tramiel and Mrs. Kapp for whom a "notes payable" account in the sum of \$25,000 was set up in the company's books, the shares remaining in the hands of C. P. Morgan in trust. George Purvin is now a schoolteacher, but has not forgotten Jack Tramiel, and in his evidence given on February 3, 1967² recalled with feeling an occasion on which the latter had said to him, "George, you are no business man; you sell typewriters and I'll sell stock".

Thus Commodore Portable Typewriter rid itself of the connection which had introduced it to the lucrative leasehold outlets in large department stores of the eastern United States, and acquired sole ownership of its subsidiary Commodore Business Machines Inc. with which Herald Superior was merged. At this point there were 400 common shares outstanding, issued at a price of \$1 each, which in the climatic meeting of the directors on December 15, 1961 were to be split 500-for-1, becoming 200,000 shares issued at 1/5¢ each. The minutes of this meeting show C. P. Morgan as holding 309 of the 400 old shares in trust, and record the authorization and issue of a further 562 old shares for a total price of \$212,550. The recipients were C. William Streit as to 125, J. Aubrey Medland as to 125, Carman G. King as to 62 and "Don

¹Exhibit 2145.

²Exhibit 4890.

Mills” as to 250, as consideration for the cancellation of the indebtedness of Commodore Portable Typewriter to Streit in the amount of \$44,900, Medland \$44,900, King \$22,750, and Don Mills \$100,000. Streit and Medland had originally lent \$50,000 each to the company, and King \$25,000, in 1960, Streit and Medland having been each repaid \$5,100 and King \$2,250. The issue of an additional 70 old shares was also authorized at this meeting; Helen Tramiel received 26, Estelle Kapp 26 and Benjamin Silberman 18, to redeem the preferred shares held by them in the aggregate amount of \$23,250. All of these transactions are explicable as a consequence of what has gone before, except the status and identity of Don Mills which was not understood at the time, other than by a select few and familiar individuals.

Identity of “Don Mills”

In the files of Aurora Leasing Corporation the Commission’s investigators found a memorandum directed to the company, and dated January 18, 1962,¹ saying, “This is your authority to issue directly to Commodore Portable Typewriter Co. Ltd. a cheque for \$100,000.00 and charge to account of Don Mills”. It was signed “Don Mills” and subscribed by “Jack Tramiel” and “Mfd. Kapp”. In handwriting at the foot were the words “Returned note of 100,000 dated Jan. 29/62 on Feb. 7/63”, below which is “Received above note—Mfd. Kapp”. On the following day an Aurora cheque,² signed by H. Wagman, was issued to Commodore Portable Typewriter in the amount of \$100,000, Aurora borrowing the money to cover it from Commodore Sales Acceptance. Commodore Portable Typewriter had a special account with Commodore Sales Acceptance in respect of an indebtedness of \$100,000, and used this money to pay it off. Commodore Sales Acceptance thereafter treated the \$100,000 as being a loan to Aurora and not, of course, to Commodore Portable Typewriter. No security was given to Aurora for the loan to Don Mills except the latter’s note. It is appropriate now to quote the rest of the letter addressed by Morgan to “Jack and Manny”:³ which is as follows:

“(d) I hereby further acknowledge that I presently hold in my possession Certificate #30 issued by Commodore Business Machines (Canada) Ltd., in the name of DON MILLS, for 250 shares. The shares represented by the said Certificate are beneficially owned as follows:

Manfred Kapp	83⅓ shares
Jack Tramiel	83⅓ shares
C. Powell Morgan	83⅓ shares

¹Exhibit 1629.1.

²Exhibit 2148.

³Exhibit 2146.

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(e) I hereby further acknowledge that a certain note in the sum of \$100,000.—, made payable to AURORA LEASING CORPORATION, by DON MILLS, which was signed by Manfred Kapp and Jack Tramiel in behalf of DON MILLS, is truly the liability of the following:

Manfred Kapp	33⅓ %
Jack Tramiel	33⅓ %
C. Powell Morgan	33⅓ %

In connection with this obligation, each of the undersigned hereby agrees to pay their proportionate share of the obligation as and when it becomes due and payable.

I am giving you this letter so that our understanding may be in writing."

It is therefore evident that Don Mills was an equal partnership between Morgan, Tramiel and Kapp, but it was by no means evident at the time, and its true identity then, as will be seen, was carefully concealed. Simply stated, the transaction amounts to this. The minutes of the directors' meeting of Commodore Portable Typewriter, dated December 15, 1961, issued to Morgan, Tramiel and Kapp, in the guise of Don Mills, 250 of the company's old shares, or 125,000 of its new shares, in satisfaction of a loan of \$100,000 which had not yet been made, and was not to be made until January 18, 1962, at which time the money left the coffers of Commodore Sales Acceptance and travelled through Aurora and Commodore Portable Typewriter back to Commodore Sales Acceptance, creating an indebtedness from Aurora to Commodore Sales Acceptance, and from Don Mills to Aurora, of \$100,000. It was, of course, Atlantic money lent by Atlantic's subsidiary to a creature of Atlantic's president, and by it to Morgan himself and his associates Tramiel and Kapp, the result being that the company which they controlled, Commodore Portable Typewriter, improved the state of its accounts with Commodore Sales Acceptance, and they themselves strengthened their grip on its equity, with a public issue of shares in prospect, without putting up any money. The 250 shares were unencumbered by pledge, and represented almost a quarter of the 1,032 shares issued as a result of the deliberations of December 15; 559 of them were held by Morgan, Tramiel and Kapp.

When Morgan gave his last evidence to the Commission the very limited time at his disposal prevented any exploration of the identity of Don Mills, but his evidence on the subject taken on October 29, 1965, long before there was any question about his health, in an examination for discovery in the bankruptcy of Evermac Office Equipment Company Limited should be recorded, since it contains excerpts of the evidence of Jack Tramiel taken in the same matter. His answers given

on oath to Mr. D. E. Baird, examining on behalf of the trustee, were as follows:⁴

“Q. Were you aware of the fact that Evermac purchased shares of Commodore Business Machines from a company known as Don Mills?

A. I was unaware of where the shares came from.

Q. Are you familiar with the company known as Don Mills?

A. No.

Q. Have you ever had any dealings with a company known as Don Mills?

A. I think Don Mills is a customer of Aurora but I don't know the complete set of facts. I don't have the records of Aurora. You asked this question before and I tried to recall but I can't recall the exact specifics.

Q. I am advised that Valley Farm and Enterprises Limited sold certain shares of Commodore Business Machines to a company known as Don Mills. Are you aware of that?

A. I would have to check that.

Q. I understand that Mr. Tramiel and Mr. Kapp have signed documents on behalf of Don Mills?

A. I can't recollect anything in connection with Don Mills.

Q. Is Don Mills a limited company?

A. I don't know what it is. I can't recall the set up at all.

Q. I questioned Mr. Tramiel as to who Don Mills was. I asked him, or he was asked concerning Don Mills. His answer was—

‘I have formed this company as an individual because Commodore Business Machines (Canada) Limited or Commodore Business Machines Inc. in New York had made a large purchase of machines from a company called Remington Rand. This particular company called Don Mills supposed to be a guarantor for the purchase. That was the only way it could be done. Remington was not looking at the assets. They were looking there should be a company in the middle. This is why this company was formed and I would like to say after, the company was not doing any business because it served the purpose the same way and always got involved back to C. P. Morgan.

Q. Was this transaction with Remington Rand prior to your association with Mr. Morgan?

A. No, it was not prior to the association with Mr. Morgan. It was after the association with Mr. Morgan but this was when it was formed. It was a deal strictly to do with Commodore Business Machines Inc. or Limited.

Q. What did the company do after that?

A. It was involved wherever Mr. Morgan gave instructions and I can't—I don't recollect all the transactions they did.’

⁴Exhibit 3670, pp. 96-100.

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A. I don't know anything about it. I don't know what he is driving at. I can't make sense out of it.

Q. I am advised that Aurora loaned money to a company by name of Don Mills. Why would Aurora have loaned money to this company?

A. Mr. Farlinger was asking me about this same transaction and we haven't been able to find the transactions at all in the books and I can't say. I am still looking for the answers.

Q. I questioned Mr. Tramiel at page 46 of his examination at question 229—

'Did you sign documents on behalf of this company, Don Mills?

A. Could be.

Q. On whose instructions did you sign those documents?

A. On the instructions of Mr. Morgan.'

A. This isn't true.

Q. I questioned Mr. Tramiel at page 45 of his examination—

'Who was Don Mills? Is it a company by name of Don Mills? Is it a person, or what is it?

A. I think—I don't know if it was a company or a partnership or it was something—

Q. Who was involved in it?

A. Mr. Morgan.

Q. Did you have any dealings personally with that outfit or company, or business by name of Don Mills?

A. On the same basis as Evermac.'

A. What does that mean?

Q. This means—I interpret this answer to mean he was acting as your nominee for any transactions with the company known as Don Mills. Is that correct?

A. That is not correct. I can't—not having knowledge of the transactions being inquired into, all I can say is that I can't recall anything in connection with it.

Q. The specific transaction I am referring to is the purchase of 17,500 shares of Commodore Business Machines through Don Mills by Evermac. Are you familiar with this?

A. No. All I know is the 17,500 shares that N.G.K. acquired from Evermac in return for Pearlsound."

By January 25, 1966 Morgan's position, stated in his examination in the bankruptcy of Valley Farm and Enterprises Limited,⁵ had changed to this extent:

"Q. Have you ever heard of a company called Don Mills?

⁵Exhibit 3676, p. 97.

A. I don't believe there is any company by that name, I believe this Don Mills was Mr. Tramiel and Mr. Kapp in connection with the purchase of some shares of stock of Commodore, and I recall the note, I think they signed to Aurora. Anyway, Mr. Tramiel can give you that answer.

Q. I am advised that Mr. Tramiel and Mr. Kapp gave a note to Aurora for \$94,500. and on Aurora's books this is shown as a loan to Don Mills, and Mr. Tramiel and Mr. Kapp directed that the \$94,500. be paid to Valley Farm.

A. Right."

On the following day, when examined in the bankruptcy of Associated Canadian Holdings Limited and asked by counsel about the identity of Don Mills as a borrower from Aurora Leasing of \$94,500, he said bluntly, "This was Mr. Tramiel and Mr. Kapp".⁶

The evidence of Manfred Kapp in the same matter, taken some three weeks earlier on October 5, 1965, was in the following vein:⁷

"Q. Mr. Kapp, the books of account of Evermac indicate that the shares of Pearlsound Distributors Limited were purchased from N.G.K. Investments Limited for 17,500 shares of Commodore Business Machines, and that the 17,500 shares of Commodore Business Machines were purchased from a company known as Don Mills, and that the money for this purchase was made to Evermac by Commodore Sales Acceptance Limited. Can you explain the reason why the transaction was handled in this manner?

A. I couldn't explain the reason at all.

Q. Who determined the manner in which the shares would be purchased and the manner by which the shares of Pearlsound Distributors Limited were paid for?

A. I would assume Mr. Morgan would determine it.

Q. What is the company known as Don Mills?

A. I don't off hand remember.

Q. Did you have any interest in this company?

A. There was a company formed in Georgia which was in short existence.

Q. What was the name of this company?

A. It was Don Mills or something, I forget.

Q. Did you arrange for the incorporation?

A. No.

⁶Exhibit 3674, p. 40.

⁷Exhibit 4156, p. 11.

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Q. Did you have any financial interest in that company?

A. No.

Q. Did you own any shares in that company?

A. Not that I know of.

Q. Do you know why this company was incorporated?

A. No.

Q. Do you know when it was incorporated?

A. It was around 1959, 1960. I don't even remember exactly the details. I just bring this out because I know there was such a company in existence for a short time."

Tramiel's evidence, given in public to the Commission on November 30, 1966, tells a different story. Mr. Shepherd, in putting to him the transaction involving the issue of 250 of the old Commodore Portable Type-writer shares to Don Mills, proceeded as follows:⁸

"Q. Who is Don Mills on this particular occasion?

A. Don Mills is Mr. Morgan, Mr. Kapp and myself.

Q. In equal shares?

A. I believe so.

Q. Why did you and Mr. Morgan and Mr. Kapp choose to use this name in this dealing with the company?

A. Well, it was easier than using the names, three names. We used to live in Don Mills for many years and we just picked this as a name.

Q. I do not understand in what sense it was easier to use the name, Mr. Tramiel?

A. Instead of calling it, like, three individuals' names.

Q. Yes.

A. It was easier it seems, and especially for me, to use one name instead of three names.

Q. Was it intended to deceive anyone?

A. Not as far as I know in any way.

Q. Did Mr. Medland, Mr. Streit and Mr. King know that Don Mills was simply a name adopted by yourself, Mr. Kapp and Mr. Morgan?

A. Well I have no reason to hide it in any way.

Q. Apart from the reasons did you yourself communicate the knowledge to anyone of those three persons, Messrs. Medland, Streit and King, of who Don Mills was?

A. I had very little contact with these gentlemen.

⁸Evidence Volume 84, pp. 11459-61.

Q. What is the answer to the question, Mr. Tramiel, no you did not communicate personally this information to them?

A. I don't think so.

Q. Do you have any knowledge of whether Mr. Kapp or Mr. Morgan communicated this knowledge to them?

A. I don't have the knowledge."

Manfred Kapp was also quite candid about the identity of Don Mills before the Commission on December 8, 1966.⁹

"Q. What is Don Mills?

A. Don Mills is—was a short-time partnership between Mr. Morgan, Mr. Tramiel and myself.

Q. Into what transaction did Don Mills engage?

A. Don Mills had acquired 125,000 shares of Commodore Business Machines from Commodore Business Machines, and borrowed \$100,000 to do so.

Q. Was the transaction, it borrowed \$100,000 and loaned it to what was then Commodore Portable Typewriters, and in settlement of the loan the minutes recorded the issue of 250 shares, which later became, as you have said, 125,000 shares?

A. That is correct.

Q. What was the reason for using the name 'Don Mills'?

A. The reason we used 'Don Mills', just it was to be simpler than to use three different names. Mr. Tramiel, myself, happened to be living in Don Mills at the time, and we used that name. It was strictly Don Mills, no company and nothing afterwards.

Q. Did Mr. Medland, Mr. Streit and Mr. King know that Don Mills was simply a name used to represent an equal partnership in respect of these shares, made by yourself, Mr. Tramiel and Mr. Morgan?

A. As far as I know they knew. I would like to point out that Don Mills, the address was listed as my own personal home address."

By this time, of course, Mr. Wolfman's evidence, and all the documents signed by Tramiel and Kapp involving the issue of shares of Commodore Portable Typewriter to Don Mills, and the purchase from Don Mills of shares by Evermac Office Equipment, which will be referred to in due course, had long since become public property. Moreover Morgan was dead, and it was the insistent and repeated contention of Tramiel and Kapp that everything they did was done at his behest or order.

Carman King could not recall, in the evidence he gave to the Commission on December 21, 1966,¹⁰ anything about the issue of shares of

⁹Evidence Volume 88, pp. 12063-4.

¹⁰Evidence Volume 93.

Commodore Portable Typewriter to Don Mills in settlement of any debt, and said that Tramiel had no reason to say that Streit, Medland or himself knew anything about it. He was under the impression that Tramiel and Kapp controlled the company through their original shares in a company that they had organized in the United States. He acknowledged, however, that he had signed the minutes which recorded the loan and the issue of shares. He said, also, that no minutes of directors' meetings were circulated beforehand, and I am inclined to believe his evidence denying any knowledge of the identity of Don Mills. The same is true of a similar disclaimer by Aubrey Medland, made on December 16, 1966. He said that he had never heard of the name Don Mills until Mr. Shepherd had mentioned it to him a few days before his appearance as a witness. At some stage he had realized that Morgan and his wife were substantial shareholders of Commodore Business Machines, but said that he was somewhat mystified by this and was never told enough of the company's affairs. But it will appear that both of these witnesses had one excellent opportunity to become aware of the commanding position of Don Mills when the first prospectus was issued, which was indeed signed by King, if not by Medland.

The Morgan, Tramiel and Kapp Shareholdings on the Eve of the Public Issue

As a result of the decisions taken on December 15, 1961, and as may be seen on Table 42, Commodore Portable Typewriter had issued, since November 5, 1958, 516,000 shares for a total of \$236,200 received by the company, securing to it an average net price of $46\frac{1}{2}\text{¢}$ per share. The price per share paid by shareholders is illustrated in the extreme right hand column of Table 42. The 13,000 shares each, held by Mrs. Tramiel and Mrs. Kapp as a result of the conversion of their preference shares, appear to have cost them just under $66\frac{1}{2}\text{¢}$ a share if one gives full credit to the transaction of April 18, 1961. As a result of a transfer made on May 31, 1962, 100,000 shares of those held in trust by Morgan were divided into four certificates, giving Tramiel and Kapp 33,333 shares each, Mrs. Morgan 16,667 and Morgan himself 16,666. Then on June 8 there was another transfer of the balance of these, being the original 109 old shares, now become 54,500 new shares and going directly to Tramiel, Kapp and Regina Silberman, Tramiel and Kapp receiving 18,000 shares each and Mrs. Silberman 18,500. The cost to Tramiel and Kapp of the 51,833 shares now held by each of them was \$104, or $\frac{1}{5}$ of a cent per share. Mr. Morgan's cost was 1.7¢ per share, and her husband held his, like Tramiel and Kapp, for $\frac{1}{5}$ of a cent. The only other shareholders who had acquired their shares for this trifling expenditure were David Samuel for 1,500 shares, Carl Solomon

for 11,500 and Regina Silberman for 18,500, her husband being on the same footing as Mrs. Tramiel and Mrs. Kapp at almost 66½¢. Mildred Morgan and Harry Wagman, the latter with 10,000 shares before the underwriting of June 29, 1962, would have enjoyed the same rate had they not each bought 100 shares at the issue price of \$2.50, a gesture which raised her average price to 1.7¢ and his to 2.7¢. The 125,000 shares held by Don Mills cost Kapp, Tramiel and Morgan 75½¢ per share. Accordingly, on the eve of the first public issue of the stock of the company now known as Commodore Business Machines (Canada) Limited, these three, and members of their families, held 314,599 of the total of 516,000 shares issued for an aggregate expenditure of \$123,411, or an average price of 39¢ per share.

The Underwriting by Barrett, Goodfellow & Co.

The underwriting of the 300,000 common shares to be offered to the public at \$2.50 per share, in accordance with the terms of the prospectus,¹ was undertaken by the Toronto stock-broking firm of Barrett, Goodfellow & Co., according to its records, on June 29, 1962. The shares were to be listed on the Canadian Stock Exchange in Montreal, and application for listing had been made by the Montreal law firm of Phillips, Bloomfield, Vineberg & Goodman, acting as agents for Solomon, Singer & Rosen, on May 25. Rennie Arthur Goodfellow, a partner in Barrett, Goodfellow & Co., who testified before the Commission on June 17, 1966,² said that he first met Powell Morgan on some unremembered occasion in 1963. Morgan, he said, had dealt with the firm, and its predecessor, Barrett, Seguin & Co., through its Hamilton office since 1955, but before 1963 only on a casual basis. Since Goodfellow could not remember the occasion on which he had first encountered a client of such evil omen to himself, with whom he subsequently became intimate, and who for a space put substantial business in his path, it is permissible to doubt that he did not meet Morgan during the course of the first Commodore Business Machines underwriting in the previous year. Goodfellow had been in the securities business since 1926 and with the Barrett firm since 1934. He gave his evidence with a cool and wary detachment, no doubt intensified by the imminence of proceedings to be taken against him by the Toronto Stock Exchange. Information gathered by Mr. Wolfman from the records of his firm indicates that the 300,000 shares to be offered to the public, out of the 816,000 shares for which the application for listing had been made, were bought from Commodore Business Machines for \$675,000, or a price of \$2.25 per share, and were sold to firms and individuals whose names appear on eight lists, of which list No. 1 contained particulars of the sale of 277,487 shares,

¹Exhibit 345.

²Evidence Volume 46.

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registered in the name of Barrett, Goodfellow & Co. and sold in the amounts and for the prices set forth below:³

	<i>No. of Shares</i>	<i>Price per Share</i>	<i>Total Amount</i>
Dallas Holdings	261,382	2.30	\$601,178.60
Annett & Company	5,000	2.35	11,750.00
Valley Farm via W. D. Latimer & Co.	1,000	2.40	2,400.00
Jenkins Evans & Co.	2,000	2.40	4,800.00
Butlin Family	400	2.50	1,000.00
J. A. Frame & Co.	2,000	2.40	4,800.00
M. Latchman (Annett & Co.)	500	2.50	1,250.00
Distribution to Nominees & others via Barrett, Goodfellow & Co.	5,205	2.50	13,012.50

Dallas Holdings Limited, a company owned in equal shares by Morgan, Walton and Wagman, thus appropriated 87% of the available shares at a price of \$2.30 per share. Following the well-trod path, Dallas Holdings, under Morgan's direction, borrowed the \$601,178.60 from Aurora Leasing which issued a cheque in this amount to Barrett, Goodfellow & Co. on June 29, signed for Aurora by Harry Wagman. On the same day Aurora borrowed \$550,000 from Commodore Sales Acceptance, of which Morgan was the president and over which he exercised complete control, to defray the cost of this loan.

It is worth while taking a short leap forward chronologically to see how these shares were disposed of, and on what terms. Here recourse must be had to the books of Dallas Holdings Limited and Valley Farm and Enterprises Limited, both being companies belonging to the Trio. On July 16, 200,000 of these shares were sold to Valley Farm and paid for by the latter assuming \$470,000 of the debt to Aurora. Thereafter there was a second sale to Valley Farm of 10,000 shares for \$23,500, and another 10,000 shares to C. P. Morgan for the same amount. On August 20 Valley Farm bought an additional 30,000 shares at \$2.35 per share, and on August 27 11,952 shares at the same price. Valley Farm had thus acquired 251,952 shares at a price of \$2.35 per share for which it paid in part by assuming a total of Dallas Holdings' indebtedness to Aurora of \$493,500. Dallas made 5¢ per share on this transaction, and from its books it would appear that Morgan either paid cash to it for his 10,000 shares or assumed a debt of that company, but apparently not any part of its debt to Aurora. The shares were not transferred on the records of Commodore Business Machines immediately to their ultimate owners, but were registered in the name of Harry Wagman in trust. All the proceeds of the issue, or \$675,000, were credited to Commodore Sales Acceptance, thus accounting for the dip in the

³Exhibit 2121.

graph representing loans by this company, and the credit position of Commodore Business Machines, in relation to its loans from Commodore Sales Acceptance, on Table 38 in June 1962. Once again the effect was not one of repayment to the Atlantic companies, but simply of changing the parties indebted to them.

The Streit Shares and Don Mills

Before returning to the balance of the primary distribution in accordance with the Barrett, Goodfellow & Co. lists Nos. 2 to 8, further reference must be made to Table 42 to follow the fortunes of the 70,000 shares owned by C. W. Streit. By an agreement, dated June 14, 1962, between Streit and Morgan these were sold to the latter for \$70,000, Wagman being the witness to the signature of the parties. The closing date of this transaction was June 20, and the shares were paid for by a loan from Aurora Leasing to Don Mills in the amount of \$94,500, for which Don Mills gave a promissory note signed by Jack Tramiel and Manfred Kapp on that day.¹ The cheque from Aurora was signed by William L. Walton and made payable to Valley Farm, which paid \$70,000 required to close with Streit through the trust account of Solomon, Singer & Rosen. Thus Valley Farm acquired Morgan's right under the agreement to buy Streit's shares for \$70,000, giving Streit a profit of \$25,085, his cost being measured by the amount of his loan of \$44,915 for the extinction of which the shares were issued on December 15, 1961. Valley Farm treated the transaction as if it had sold the shares to Don Mills for \$94,500, thus realizing a profit of \$24,500. If Streit was content with a modest profit at this stage when he, as a director and as a signatory of the prospectus, knew that shares were to be issued to the public at \$2.50, it was no doubt because he also realized that, under the undertaking to hold shares in escrow contained in paragraph 30 thereof, only 7,000 of his shares could be free in his hands for at least three months, and that the success of the public issue was by no means assured. In any event, his resignation as a director of Commodore Business Machines is recorded as having been accepted on August 9, 1962.

Here again the registration of the Streit shares was not changed, and the ultimate destination of 63,000 of them, which would be subject to escrow, is revealed by the memorandum headed "C. P. Morgan, Wm. L. Walton and H. Wagman—Statement of Investments as at August 31, 1962",² already referred to. The second item on the list, shown under the heading "shares in public companies", is "63,000 shares Commodore Business Machines Inc. @ \$4 for \$250,000", the "Inc." being as obvious an error as the value per share is an obvious anticipation. The number of 63,000 shares is exactly what would be required out of 70,000 shares to comply with the provisions of an escrow agreement which will be considered below. The working papers of Walton, Wagman

¹Exhibit 2151.

²Table 30.

& Co.³ show the 63,000 escrowed shares as pledged with Aurora Leasing against the loan to Don Mills, on a sheet entitled "Working Sheet re Trio Account Holdings". In the end Tramiel and Kapp got 13,333 of these shares each, through Associated Canadian Holdings paying \$29,200 to Aurora and charging \$14,600 each to Tramiel and Kapp. Further evidence of the disposition of these shares is provided by the cheque book of account No. 13324 in the Guaranty Trust Co. of Canada—the Trio account of Walton and Wagman⁴—which contains a stub, dated March 26, 1963, recording a payment of \$157.50 to the Eastern Trust Company for Ontario transfer tax on 63,000 escrowed shares of Commodore Business Machines. On June 20, 1962 Carl Solomon wrote on behalf of his firm to Walton, Wagman & Co.,⁵ reporting on the purchase by C. Powell Morgan from C. William Streit of 70,000 shares of Commodore Business Machines, reciting Streit's attendance at his office, the delivery of two certificates for 140 of the old shares, together with a promissory note to him, dated July 4, 1960, for payment of \$50,000 in U.S. funds and his resignation as a director of the company to take effect upon acceptance by the board. He concludes by asking for a cheque in the amount of \$70,000. The original escrow agreement referred to was found in a file of Solomon, Singer & Rosen,⁶ is dated June 1962, the day of execution having been omitted; the parties executing it were J. Aubrey Medland, Helen Tramiel, Estelle Kapp, Benjamin Silberman, Don Mills per Manfred Kapp, Mildred Morgan, Jack Tramiel, Manfred Kapp personally, Harry Wagman, C. William Streit, Carman G. King, Carl M. Solomon, C. Powell Morgan and the Eastern Trust Company. David Samuel is shown as a party of the first part, but apparently omitted execution of the agreement. It provides for the lodging of 90% of the shares owned by the parties of the first part in escrow with the Eastern Trust Company, in the total amount of 464,400 shares, and their release by the latter as escrow agent, *pro rata* to the parties entitled thereto, of one-third six months from the date of acceptance of the prospectus by the Ontario and Quebec Securities Commission, whichever is later, one-third after nine months and the remainder after twelve months, and prohibits any sales of escrowed shares in the interim, other than between the parties, or to such officers or employees of Commodore Business Machines as shall become parties as a result.

Evidence of Distribution for the Canadian Stock Exchange

In the meantime the process of listing the stock of Commodore Business Machines for trading on the Canadian Stock Exchange had reached the point where Phillips, Bloomfield & Co. had been advised,¹

³Exhibit 1700.

⁴Exhibit 806.

⁵Part Exhibit 1705.

⁶Exhibit 880.1.

¹Exhibit 2153.

on June 12, that the Exchange's listing committee had accepted the application "subject to evidence of satisfactory distribution and full listing application". On July 26 Solomon, Singer & Rosen wrote to the exchange,² enclosing the application to list 816,000 common shares and asserting that as at July 13 there were 295 shareholders. Since immediately prior to the public issue of June 29 there had only been 16 shareholders, this transformation requires examination. On July 9 Barrett, Goodfellow & Co. despatched its eight lists of names of persons, for whom the registration of 300,000 shares was required, in the amounts set opposite each, to the Eastern Trust Company as transfer agent,³ asking for notification of the time at which the certificates might be picked up, and expressing particular interest in the first one, specifying the certificates and denominations required to be registered in the name of Barrett, Goodfellow & Co. for a total of 277,487 shares. List No. 4 and List No. 8 contain the names of 54 persons for whom 100 shares each are sought. List No. 5 contains 13 names, 11 of which require 100 shares each, including Campbell Morgan, Mildred Morgan, Andrew M. Suggett and W. L. Suggett, all at 11 St. Ives Crescent, Toronto, which was C. P. Morgan's address; the only exceptions to the 100 share allotment are that of 1,000 shares for Mrs. Ann P. Gregory and 1,000 shares for Mr. Wilfrid P. Gregory of Stratford. British Mortgage & Trust Company appears on List No. 6 as requiring 10,000 shares. Also in the Barrett, Goodfellow & Co. underwriting file⁴ is a receipt of William L. Walton, crediting him with \$12,500 received by cheque, with the notation, "See Attached List", immediately adjacent to which is a typed list of names which turns out, on examination, to contain the same 50 names as Barrett, Goodfellow & Co.'s List No. 8. Stapled to this is a note which reads "5,000 shares 50 x 100 paid June 28th Wm. L. Walton Guaranty Trust Company account 13324 for \$12,500". This reference to the Trio account coincides, except as to date, with a cheque stub for that account⁵ dated, obviously in error, June 29, 1961, and saying, "In favour of Barrett, Goodfellow 5,000 C.B.M. @ \$2.50 — \$12,500 W.L.W. List". Then there is a copy of a letter addressed to William L. Walton and dated July 12, 1962, reading as follows:⁶

"Dear Bill:

We are enclosing fifty power of attorney covering a total of 5,000 shares of Commodore Business Machines (Canada) Limited. We are holding the relative certificates in this office subject to your direction.

Yours very truly,
Barrett, Goodfellow & Company,
A. A. Amos"

²Exhibit 2154.

³Exhibit 2121.3.

⁴Exhibit 2121.

⁵Exhibit 806.

⁶Exhibit 2121.2.

Finally the list reappears as annexed to a receipt for securities, signed by Harry Wagman, on delivery slips of Barrett, Goodfellow & Co. on August 30, and the records of Commodore Business Machines disclose that 35 of the 50 certificates for 100 shares, issued in accordance with this list, were transferred on December 31, 1964 to Associated Canadian Holdings, all 50 certificates having executed powers of attorney attached and cancelled.⁷

Evidence of Jeffreys, Knowles and Spanton

The curiosity of the Commission's investigators was aroused by the appearance in the Barrett, Goodfellow file of two letters, the first¹ addressed to Mr. E. A. Jeffreys, of R.R. 3, Orangeville, and the second² to Mr. Wm. Knowles of 9 Fairbourn Crescent, Toronto, both being original letters from Barrett, Goodfellow & Co., signed by A. A. Amos, in the following terms:

"We are enclosing a copy of the prospectus of Commodore Business Machines (Canada) Limited dated May 31st, 1962.

We take this opportunity of thanking you for your valued order. Our confirmation of your purchase will be mailed to you under separate cover."

At the foot of that sent to Jeffreys was the handwritten note, "Opened in error—No knowledge of this", and the one addressed to Knowles had been marked, "Wrong Address", and stamped by the Post Office, "Return to sender—unknown". Messrs Jeffreys and Knowles were accordingly interviewed and in due course appeared before the Commission with Herbert J. Spanton, formerly secretary to C. P. Morgan, on May 26, 1966.³ Certificate 0253 for 100 common shares of Commodore Business Machines, issued in the name of E. A. Jeffreys, with power of attorney purportedly signed by the holder and the signature witnessed by W. L. Walton, was put to the witness Jeffreys who denied on oath that it was his signature, but recognized that of Walton. He said further that he had never discussed with anyone the possibility of subscribing to the initial underwriting of these shares. The witness Knowles, who was an accountant with Walton, Wagman & Co. at the material time, had the same to say about certificate 256 issued in his name with the same endorsements. Herbert J. Spanton, testifying as to two certificates each for 100 shares, one issued in his name and the other in that of his wife, swore that the signature "H. J. Spanton" appearing on the power of attorney to transfer the shares was not his, and offered a specimen of his wife's handwriting in evidence⁴ to prove to my satisfaction that the

⁷Exhibit 2156.

¹Exhibit 2121.4.

²Exhibit 2121.5.

³Evidence Volume 38.

⁴Exhibit 2249.

same was true of the signature appearing to be hers. The witness to these signatures was, in each case, W. L. Walton. Much later, when Walton himself gave evidence,⁵ he said that if Spanton did not attend before him, some one had assured him that the signature "H. J. Spanton" was genuine, and acknowledged that it was a possibility that he had witnessed this signature in Spanton's absence. He acknowledged further that he had never met Mrs. Spanton, but that "somebody else" had told him that she had signed the power of attorney. He could not recall the name of this informant, but did recall Morgan asking him for a list of names of people whom he wanted to act as shareholders of Commodore Business Machines. The reason for this escaped him. He maintained that he had got the consent of all the people whose names he had listed to "lend their names", but did not think that any of them ever had beneficial ownership of the shares; the signatures of "W. L. Walton" as witness he admitted in each case to be his own.

The Services of Irwin Singer

Between June 29 and July 14 an additional 153 shareholders appear on the company's lists. Certificates Nos. 22 to 33 inclusive comprise the 7,000 shares in the Streit block, free from escrow. On July 11 Irwin Singer wrote to the Eastern Trust Company, to the attention of J. K. Breakey, in the following terms:¹

"Re: Commodore Business Machines
(Canada) Limited

Dear Keith:

We enclose herewith a list of names and addresses beside which are the number of shares to be transferred into the names of the following persons. We also enclose herewith 'Street Certificates' in the same amount.

To facilitate our listing on The Canadian Stock Exchange, we would appreciate it if you would record such transfers and issue new share certificates as quickly as possible.

When the new share certificates are completed I will take delivery of the same for the respective shareholders.

We also enclose herewith share certificates Number 22 to Number 33, totalling 7,000 shares, for all of which share certificates have been duly endorsed in blank for transfer."

The list consists of 55 names, with appropriate addresses and the number of shares to be transferred set opposite. Most were lots of 100 shares, except in the cases of Arlene Joyce Goldhar, Murray Poizner, Julius Poizner, Bernard and Charlotte Awerbuck, Albert Goldhar, Arthur Irvine,

⁵Evidence Volume 81.

¹Exhibit 880.2.

Harvey Wagman, Sylvia Wasylyshem, Barbara Wagman and Goldie Wagman, who were to be issued 200 shares each, and Harry L. and Ethel Solomon who were to get 300 each. Two days later Singer, again writing for his firm, reported to Harry Wagman,² referring to the fact that certificates numbers 22 to 33, representing 7,000 shares registered in the name of "William C. Streit", had been "handed to us for transfer", and set out the same names with the appropriate share certificate numbers, and the numbers of shares contained in each of two groups, one totalling 4,300 shares and the other 2,700 shares. He enclosed, according to his letter, certificates numbers 382 to 403 inclusive, representing the 2,700 shares and said, "we would ask that you have the registered owners endorse their respective share certificates in blank". After pointing out that it would be necessary to have the signatures thus obtained guaranteed by a bank, he concluded: "We will similarly have the shares as set out in column (a) above endorsed in blank by the respective registered owners and arrange to forward them as per our instructions." A copy of this letter is indicated as going to C. P. Morgan. Singer wrote again on July 18, also to the attention of Harry Wagman and also with a copy for Morgan, in the following terms:³

"Further to our letter of July 13th, last, we have now had the opportunity of having certificates, representing 4,300 shares in the capital stock of the above-noted Company, 'signed off' and accordingly, hand them to you together with share certificates representing 2,700 shares, as set out in the letter dated July 13th, 1962.

We also turn over to you, Share Certificates Number 417, through to 426, inclusive, representing 1,000 shares in the capital stock of the Company. These certificates were transferred from C. P. Morgan to ten people, whose names, were supplied to us by Mr. John Shemilt. We presume that you will arrange through Mr. Shemilt to have these certificates 'signed off'.

Would you be kind enough to execute the attached acknowledgement of Share Certificates representing a total of 8,000 Common Shares in the capital stock of the Company."

Evidence of Edward L. Stone

One of the names which appeared on the list representing 4,300 shares, for which Singer made his firm responsible in the process of getting the transferees to "sign off", was that of Edward Lawrence Stone. His address on the list sent to the Eastern Trust Company was given as 500 University Avenue, Toronto, and he was said to require the issue of 100 shares. Mr. Stone is a solicitor of the Supreme Court of Ontario practising in Toronto, and gave his evidence to the Commission on

²Exhibit 880.3.

³Exhibit 880.4.

March 20, 1967.¹ He was a friend of Singer, and the reluctance with which he said what he had to say emerges from the transcript.

“Q. Mr. Stone, your full name, sir?

A. Edward Lawrence Stone.

Q. Mr. Stone, from Exhibit No. 2156, I am producing to you, sir, the original of a share certificate number 0379, of Commodore Business Machines (Canada) Limited. Share evidencing ownership of 100 common shares of Commodore Business Machines (Canada) Limited dated July 12, 1962. Mr. Stone, on the reverse side of this certificate there is a signature in ink, ‘Edward Lawrence Stone’.

Is this signature in your handwriting, sir?

A. No, it is not.

Q. Mr. Stone, were you ever the owner of 100 common shares of Commodore Business Machines (Canada) Limited?

A. I can’t recall being the owner of the 100 shares represented by this certificate, sir.

Q. Do you have any idea, sir, how your purported signature comes to appear on this particular certificate?

A. At this time, I don’t know.

Q. Did you ever, at any time, have any dealings of any nature whatsoever, that might have led to an acquisition by you of a hundred shares of Commodore as evidenced by this certificate?

A. I can’t specifically recall any such dealings.

Q. Well, just to be fair . . . ?

A. I might say, that the first time I actually saw the certificate was when a Mr. Angus of your office, presented it to me on Friday afternoon, the actual certificate itself. I then wrote out my signature.

Q. Perhaps I will deal with your signature.

I am producing to you, sir, a small slip of paper tacked on to a blank sheet on the slip of paper is the inscription ‘Edward Lawrence Stone’. Is this your signature and in your handwriting, sir?

A. Yes.

MR. CARTWRIGHT: Thank you. I ask that this signature specimen as identified, be entered and marked as an exhibit.

THE COMMISSIONER: Exhibit 4209.

—*EXHIBIT 4209*: Slip of paper with the inscription ‘Edward Lawrence Stone’.

MR. CARTWRIGHT: With reference to the share certificate, sir, before you, I see that it is guaranteed as to signature by Irwin Singer and witnessed by Irwin Singer. Would that assist your memory, sir, as to anything generally you might know about this?

¹Evidence Volume 106, pp. 14363-6.

A. As I say, at this time, at this particular time I can't recall anything. As I say, the first I saw of it was last Friday and I can't recall anything at this moment.

THE COMMISSIONER: Well, you think you will be able to recall anything at a later period and if so, why?

A. My lord, it is possible. I don't really know the circumstances, the particular circumstances that surround this certificate. As I say, the first that I saw of it was last Friday. I do know Mr. Singer, and I have known him for some time. As a matter of fact, we were in college together, but I don't know the—at this particular time I recall really can't recall anything that might concretely give us any information as to the certificate. Except that the signature is not mine.

Q. And just for the record, Mr. Stone, I don't think that counsel has asked you—what is your business?

A. Solicitor.

Q. Here in Toronto?

A. (no audible answer).

THE COMMISSIONER: The witness nods assent to that.

THE WITNESS: Yes.

MR. CARTWRIGHT: Well, just so I won't leave anything uncovered, sir, is there anything at all that might assist me as to how your purported signature turned up on the reverse side of this certificate?

A. No."

Evidence of Irwin Singer

Irwin Singer was thereupon recalled to the stand and examined at length by Mr. Cartwright as to his reasons for witnessing and guaranteeing what was clearly not the signature of Stone, and as to all the other signatures which were treated by him in the same manner. With respect to the Stone signature he must be allowed to speak for himself, and in full.¹

"IRWIN SINGER, recalled:

THE COMMISSIONER: Mr. Pomerant, you are with Mr. Singer?

MR. POMERANT: Mr. Commissioner, I take it that the protection earlier sought as regards to the Canada Evidence Act still applies?

THE COMMISSIONER: Yes, very well.

EXAMINED BY MR. CARTWRIGHT:

Q. Mr. Singer, please, would you look at part of Exhibit No. 2156. The part I am referring to is the certificate number 0379.

¹Evidence Volume 106, pp. 14367-74.

THE COMMISSIONER: Perhaps before you do that, I forgot to remind Mr. Singer that he is still under oath, having testified before. Is that clear?

A. Yes.

THE COMMISSIONER: Yes.

MR. CARTWRIGHT: Mr. Singer, would you look at the reverse side of the certificate please. I believe you have just heard the evidence of Mr. Stone as to the authenticity of the purported signature of Edward Lawrence Stone.

Did you hear his evidence, sir?

A. Yes, I did.

Q. Sir, does your signature appear here as a witness and also did you inscribe beneath the purported signature of Mr. Stone in brackets, 'signature guaranteed by Irwin Singer'?

A. I did.

Q. Would you explain, sir, the signature of Edward Lawrence Stone on this document?

A. I can only guess. I can't recall specifically. There were a number of share certificates of Commodore Business Machines (Canada) Limited that were registered in the names of either personal friends or relatives of myself and my partner.

These share certificates we came to learn, were not owned by these individuals. Mr. C. P. Morgan, I believe, requested that we have the share certificates signed off and put into street form by these individuals in most instances. We contacted these individuals and had them in fact sign them off. In some instances when we talked to these people and requested that the share certificates be endorsed by them, they said either to me or to my partner, 'Well, you go ahead and sign it off. Sign my name, it is all right. I don't own the share certificate in any event.'

I would guess that this was the circumstances with respect to the signature of Mr. Stone on this share certificate were exactly that. That is permission to—for myself or my partner—to sign his name on the share certificate was obtained and the signature written on the back of the share certificate. The purpose of the guarantee by myself on the share certificate, was at the request of the transfer agent. He would accept my guarantee of the signature as guaranteeing that in fact the share certificate was in properly in street form for transfer and he would have the share certificate transferred.

Q. Did you write 'Edward Lawrence Stone' on this document?

A. I don't think so. This doesn't look like my handwriting.

Q. Who did?

A. Well, it would either be myself or my partner, Mr. Solomon.

Q. Mr. Carl Solomon?

A. That is right.

THE COMMISSIONER: I appreciate the fact that you said Mr. Singer that this was a guess, but in view of what Mr. Stone has said, certainly it can't be a very helpful guess in his particular situation, because he didn't tell us that he talked to you on the telephone and said, 'Go ahead, sign my signature' or anything of that kind.

Is there anything concrete you can remember about this?

A. Not this specific nature, Mr. Commissioner. The friends and relatives in whose names share certificates of Commodore Business Machines (Canada) Limited were issued—that was my friends, my relatives and those of my partner, Mr. Solomon, I know specifically each and every one was contacted and in each instance either their signature was obtained or their permission for the endorsement was obtained. Now, I can't recall the specific conversation with Mr. Stone. Whether I telephoned Mr. Stone, or whether Mr. Solomon telephoned Mr. Stone.

Q. Well, that is my difficulty, because Mr. Stone has said that he recalls nothing about it and certainly I would expect him to recall having talked to either yourself or Mr. Solomon on the telephone and said, 'You can sign this. Because it really isn't mine'. That is my problem.

A. I can't explain that, sir.

MR. CARTWRIGHT: Mr. Singer, in view of the fact that this was done in this manner, did you not write a letter of confirmation to Mr. Stone, confirming that this had been done? Wouldn't that be the normal course for a solicitor to do something like this?

A. No, sir. Mr. Stone was the registered holder of the share certificate, but he had no beneficial ownership in it. His name was obviously being used as a nominee shareholder. There was no legal transaction as such involved in this matter. I wasn't acting on behalf of Mr. Stone. His permission, I believe, had been granted to the endorsement and the endorsement is made.

THE COMMISSIONER: Can you tell me why a number of your friends and Mr. Solomon's friends were assembled to have Commodore Business Machines certificates issued in their name. Was this done at somebody's request to you and Mr. Solomon?

A. Yes.

Q. For what purpose?

A. This happened a long time ago, almost five years ago, and I have been giving it some thought, and to the best of my recollection, what occurred was, at the time of the initial public offering of shares of Commodore Business Machines, the offering was the best efforts offering. There is no underwriter and an effort was being made through the Barrett Goodfellow firm and through the officers and directors and principal shareholders of Commodore Business Machines to sell its shares to the public at large. I believe that myself and Mr. Solomon among other people, and I think there were quite a number of other people, were approached by Mr. Morgan and requested to furnish names of potential purchasers of Commodore Business Machines. I told in

reply to this question—I told them that the only people that I knew who might be interested were my friends and my relatives and primarily only because we were the solicitors for the company.

We had great faith in the company. I was requested to furnish a list of these names, I did. I believe Mr. Solomon, did also. We discovered at a later time—now I am not sure whether it was days, weeks or months, that in fact shares had been issued in the names of these people. Now, this was not done with our consent, but it had been done. We were then requested to have these share certificates signed off by these people and that is how it came about.

Q. Let me see if I can refresh your memory a little. We have heard evidence that the purpose for getting shares into the hands or apparently into the hands of individuals, was to give or to satisfy the Canadian Stock Exchange's requirements before making a public listing. That they should be distributed sufficiently to the public to comply with the rules of the Exchange.

Now does that help you to explain why these names were asked for and furnished?

A. Well, I think sir, that that is probably why the shares were registered in these peoples' names, but this was not the reason given to me at the time that the list of names was furnished.

Q. I see.

A. But, as I recall it, the reason that I was requested and Mr. Solomon was requested to furnish names was for the purpose of furnishing potential purchasers of shares of Commodore Business Machines, and the names were furnished on that basis. The ultimate issue of the share certificate in their name came as a great surprise to both Mr. Solomon and myself when we discovered it, and it was discovered at the time that the share certificates were presented to us with the request that we have them signed off.

Q. Mr. Singer, I must tell you that it comes as a great surprise to me that a solicitor should witness a signature and go even further, guarantee a signature, which the signatory says is not his, and I want to give you every opportunity to explain it, but do you take the position if this signature is not Mr. Stone's, as he says on oath it is not, and since he says that he was not aware of having owned any Commodore Business Machines stock that it was the proper thing for you to do, or even an effective thing for you to do, to witness his signature as having been signed and then guarantee it.

I should explain I want to be fully in possession of your views before I draw any conclusions about it.

A. Well, I am afraid that I can add nothing to what I have said. The position that I take on the matter is that it was done with his full knowledge and concurrence and it was done as a—it was not signed by him only, because it was probably inconvenient at the time to attend upon him or have him attend upon us for the purpose of signing that, the signature—it was not his signature—in fact, exhibited his intent and

under those circumstances the—my signature on it is nothing further than the fulfilment of the condition of the transfer agent that the share certificates would be transferred to the proper owner.”

There were further questions directed by both Mr. Cartwright and me to the witness on this subject, and concerning other names and signatures which had been used in the same manner as that of Stone, but the above quotation constitutes a fair sample of Singer’s views as to the actions of himself and his partner Carl Solomon on this occasion. Anyone reading it, together with the letters written to the transfer agent and to Harry Wagman, can hardly be in any doubt as to the disingenuousness of his explanation or the impropriety of his actions. The effect of what he did was particularly within his knowledge as a practising lawyer, and cannot be excused.

Evidence of John R. Shemilt

When Singer made his final report to Wagman in this matter on July 18, it will be recalled that he also enclosed Commodore Business Machines share certificates Nos. 417 to 426 inclusive, representing 1,000 shares transferred from C. P. Morgan to ten people whose names had been supplied by John Schemilt.¹ This reference was, no doubt, to a letter dated July 10,² on the notepaper of Netherlands Overseas Corporation Canada Limited at 197 Bay Street in Toronto, addressed to Carl Solomon, and reading:

“Dear Carl:

Powell mentioned you might need a few extra names for the Commodore Business Machines listing.

Yours very truly,
John’ ”

Attached to the letter was a typewritten list of names of ten people with their addresses as follows:

“Miss W. Bakkenes,
193 Norton Avenue,
Willowdale, Ontario.

Miss Carol Davidson,
17 Leggett Avenue,
Weston, Ontario.

Mr. Edward Lee,
45 Glen Road, Apt. 205,
Toronto, Ontario.

Miss Shirley Robertson,
1596 Bathurst Street, Apt. 3B,
Toronto, Ontario.

Mr. Charles Montgomery,
188 Olive Avenue,
Willowdale, Ontario.

Mr. Robert A. White,
31 Alexander Street, Apt. 610,
Toronto, Ontario.

¹Exhibit 880.4.

²Exhibit 2157.

Mrs. Gerry Shemilt,
74 Brooke Avenue,
Toronto, Ontario.

Miss Renee Fine,
45 Elm Street,
Toronto, Ontario.

Mr. Jan Duinker,
266 Donnell Drive,
Port Credit, Ontario.

Mr. John Shemilt,
197 Bay Street,
Toronto, Ontario."

Shemilt had been examined on this matter almost a year before Stone and Singer, on May 26, 1966. Mr. Cartwright put the letter to Solomon to him and he said that some of the names were those of employees of Netherlands Overseas Corporation and some were those of friends of his.⁸

"Q. Yes. Did you consult with each person that appears on this list, that is, on page 2 of Exhibit 2157, and ask them if they wished to subscribe to the common shares of Commodore Business Machines (Canada) Limited?

A. I did not ask them if they would care to subscribe to the shares of Commodore Business Machines.

Q. Why did you put their names on this list, then?

THE COMMISSIONER: Well, what did you ask them?

A. As I recall, Mr. Morgan phoned me and said that he was interested in a company Commodore Business Machines, which I had never heard of particularly, that was being turned from a private company into a public company and that they had received approval to list the shares on the Canadian Stock Exchange, and he wondered—I can't remember how he worded it to me, but he wondered whether I had any people who might be interested in acting as a nominee for him. He assured me that they had sufficient names to meet the requirements of the Exchange but felt that they might like, for appearances' sake, to have as long a list as possible.

Q. So then what did you do?

A. I associated these various people and asked them if they in turn would do a favour for me, because I felt I was doing a favour for Mr. Morgan.

Q. What did you ask them to do?

A. I asked them if—I'm not sure how I worded it, but in effect if they would be willing to act as a nominee.

MR. CARTWRIGHT: Yes. And why did you send this letter to Mr. Solomon, what did he have to do with this?

A. It must have been that Mr. Morgan said if I have any nominees to send them to Mr. Solomon.

Q. And these people were quite content to be a nominee?

A. As far as I remember they were.

⁸Evidence Volume 38, pp. 5261-7.

COMMODORE BUSINESS MACHINES

Q. No one objected?

A. Not that I can remember.

Q. What did you explain to them that this was going to entail or involve on their part?

A. I don't remember what I explained, except I am sure I would say to them it isn't really involving anything very much on their part.

Q. Mr. Shemilt, I assume that no one paid any money, none of those people paid any money for those shares?

A. I would assume so. In fact, I wasn't even sure the list was going to be used at the time.

Q. Out of Exhibit 2156 I am producing to you a share certificate in this company, number 426, for 100 common shares, and power of attorney on the back, is this your signature here on the power of attorney?

A. That is my signature.

Q. And Mr. Wagman as witness, H. Wagman.

A. Yes.

Q. Did you sign this off in his presence, sir?

A. I don't remember when I signed it off. I would assume it was in Wagman's presence.

Q. Also out of the same exhibit I show you certificate number 425, for 100 common shares, Mr. John Duinker. He is an executive, sir, of Netherlands Overseas?

A. That is right.

THE COMMISSIONER: He is the president, isn't he?

A. That is right, sir.

MR. CARTWRIGHT: Do you recognize that power of attorney of transfer, Mr. Duinker's signature there?

A. That appears to me to be Mr. Duinker's signature.

Q. I see. Did he ever discuss this with you subsequently to July 12th, 1962, that he held a hundred shares?

A. Not until the last day or two when there was mention made in the newspaper.

Q. I see. And who were the people all going to be nominees for?

A. It was Mr. Morgan who asked me, so I assume it was for Mr. Morgan.

Q. Mr. Morgan. And your wife's name, sir? Are you married, sir?

A. Yes.

Q. And your wife's name?

A. Gerry.

Q. Mrs. Gerry Shemilt is your wife, sir?

A. Yes.

Q. And on the back page of certificate 420, the power of attorney form, the lower right hand corner, 'Mrs. Gerry Shemilt', is that your wife's signature, sir?

A. That appears to be.

Q. Are you sure?

A. I can't be sure. It appears to be.

Q. Did she sign her name ordinarily Mrs. Gerry Shemilt whenever she signs a signature?

A. I believe the practice when signing a share certificate, you sign it exactly on the back as it appears on the front.

Q. You cannot say for sure whether this is your wife's signature?

THE COMMISSIONER: Let us put it a little more precisely. Is that your wife's writing?

A. It appears to be, sir, yes."

On re-reading this transcript many months later, I was impressed by the repetition of the words, "It appears to be", even after the intervention by myself, and concluded that counsel and I had been too easily satisfied with the answers dealing with Mrs. Shemilt's certificate. In consequence two of the Commission's investigators attended upon Mrs. Shemilt on September 22, 1967, and were told by her that she knew nothing about the certificate. At the same time she furnished them with a sample of her own handwriting which, on examination by the experts of the Centre of Forensic Sciences, proved not to be the handwriting of the person who had signed the power of attorney on Certificate No. 426. This report led to a number of examinations of the persons on Shemilt's list under the Securities Act by Mr. Cartwright, and by Mr. Gillman of the Ontario Securities Commission. Those examined were Carol Holt (née Davidson), Jan Duinker, Robert A. White, Charles Montgomery, Edward Lee, Wilhelmina Bakkenes, Renée Fine, John R. Shemilt and Shirley Robertson.⁴ Other than Shemilt himself, they all maintained on oath that it was not until they were asked to execute powers of attorney that they were told of the use of their names as shareholders of Commodore Business Machines. They had been content to do this as a favour to Shemilt who in each case was present when their signatures were affixed. In no case, however, does Shemilt's name appear as a witness, six of the signatures being ostensibly witnessed by Manfred Kapp, two by Harry Wagman and two by W. L. Walton, none of whom were in fact present. Mrs. Shemilt was not examined because of her delicate health.

⁴Exhibits 5090-5, 5097 and 5099-5100.

It will be remembered that Shemilt was not only the owner and operator of Old Angelo's Restaurant, indebted to Morgan and Morgan's companies, but also the general manager of a company engaged in the securities business and a wholly-owned subsidiary of the Netherlands Overseas Bank in Amsterdam. The handling of share certificates, and the effect of mishandling them, are as peculiarly within his knowledge as in the case of Irwin Singer. Both engaged in pursuits where expert knowledge and a high degree of responsibility must be assumed by the public and ensured by the regulatory authorities. In the case of Shemilt it is for the Ontario Securities Commission, as it is for the Law Society of Upper Canada in the case of Singer, to say the final word within the limits of their jurisdiction, and for the law officers to consider the possibility of perjury having been committed.

Information Required by and Given to the Canadian Stock Exchange

There is no record in the books of Commodore Business Machines that any of the purported owners of these 7,000 shares of the Streit block which were issued in their names by the Eastern Trust ever paid any money for them, and 2,900 shares were dealt with again when they were transferred on December 31, 1964 to Associated Canadian Holdings, a company owned by Morgan, Tramiel and Kapp and their families; a further 2,100 shares were eventually lodged with the Mercantile Bank as collateral to a loan to that company on May 17, 1965. The registrations and transfers of shares between July 10, 1962, the date on which the Eastern Trust issued 300,000 shares in accordance with the eight lists submitted by Barrett, Goodfellow & Co., and July 13 the date of the application to the Canadian Stock Exchange to list 816,000 shares in which the shareholders were said to be 295 in number, may be found at Table 43.¹ It shows that the 300,000 shares to be offered to the public appeared to be in the hands of 112 shareholders, 50 of which are recorded in W. L. Walton's list No. 8, for whose shares Walton paid \$12,500 to Barrett, Goodfellow & Co. out of the Trio account, and in its lateral extension the incidence of the number of shareholders and the shares held, in categories, beginning with holdings of one to 100 shares and ending with 1,000 shares and over. Of the 112 reputed shareholders 97 of them appear as holding 8,013 shares in denominations of 100 or less; nine individuals held 1,700 shares in denominations between 101 and 200; two held 800 shares in denominations between 301 and 400; Mr. and Mrs. W. P. Gregory held 1,000 shares each; and, in the classification of 1,000 shares and over, British Mortgage & Trust Company held 10,000 and Barrett, Goodfellow & Co. 277,487 shares, for sale in a manner already described, but principally to Dallas Holdings Limited. The trades subsequent to initial distribution are illustrated below the reference to 516,000 shares held by promoters, either free or

¹Exhibit 2158.

in escrow, and the sources of request for registration are identified where possible. By July 13, when the total of 295 shareholders of 816,000 shares was reported, 239 apparently held 19,139 shares in amounts of 100 or less; 28 held 5,310 in amounts between 101 and 200, two held 600 in amounts between 201 and 300; three held 1,200 in denominations of 400 shares each; three held 1,500 in denominations between 401 and 500 shares; three held 3,000 shares in denominations of 1,000, and only 17 held 785,251 in amounts of over 1,000 shares. The information thus set forth is substantially in agreement with the analysis of shareholdings contained in the listing statement forwarded in Singer's letter of July 26 to the Canadian Stock Exchange,² which supplied the items of information required by it before final approval of the application. In this letter the company's solicitors also say that the five largest shareholders are Don Mills with 125,000, J. Aubrey Medland with 72,500, Carman G. King with 35,000, Manfred Kapp with 33,833 and Jack Tramiel with 33,833 shares (a total of 300,166); that, of the 816,000 issued shares, 464,000 are held in escrow, 287,666 are in the hands of the promoters, officers and directors of the company and their agents or trustees; that, therefore, the percentage of shares in the hands of the public is 64.75%. This extraordinary calculation is illustrated by the fraction $\frac{528,334}{816,000} \times 100$, which is mathematically correct but otherwise unintelligible. It is remarkable that it did not appear to be so to the officer of the exchange who received and, presumably, perused the letter.

The attitude and requirements of the Canadian Stock Exchange in the middle of 1962 were the subject of evidence given by Giovanni Giarrusso on May 26, 1966.³ At the time he gave it he was manager of the respective listing departments of the Canadian Stock Exchange and the Montreal Stock Exchange which are apparently operated in conjunction, but unfortunately he was not so employed, and was not indeed an employee of the exchanges in July of 1962. Their rules with respect to listing were first published at the beginning of 1963,⁴ but before then listing requirements were in the discretion of the Board of Management which considered each case separately. Giarrusso said that the practice followed by the Board was substantially the same as what is now required, except that in 1962 the general rule was that at least 20% of the issued and outstanding shares were to be held by the public, exclusive of officers, directors, promoters or their agents or trustees. There was an additional requirement that there should be at least 100 shareholders, each holding one board lot or more of a company's stock. In 1963 the requirement changed so that the minimum percentage of shares to be held by the public became 25% and the minimum number

²Exhibit 2264.

³Evidence Volume 38.

⁴Exhibit 2257.

of shareholders 150. These prerequisites to listing were insisted upon, according to this witness, in order to establish public need and to ensure the maintenance of a free and orderly market at a price which would reflect the judgment of a large number of shareholders, as well as potential investors.

If the common stock of Commodore Business Machines was called for trading on July 23, 1962, as Giarrusso testified, it is difficult to understand why this should have been done three days before the date of the letter from Solomon, Singer & Rosen⁵ containing the information as to the five largest shareholders and the proportion of shares in the hands of the public, receipt of which was the condition imposed by the Board of Management for final approval of the full listing application. Giarrusso said that it was in the discretion of the Board to require a list of shareholders, but in this case they did not; if the Board had known of the Don Mills arrangement, they would not have considered these 125,000 shares as being in the hands of the public; and that if private companies, controlled directly or indirectly by a director or officer of the company making the application held shares in it, the extent of such holdings would not be considered as being public participation. *A fortiori* the same considerations would apply to the registration of shares in the names of persons who executed powers of attorney, and gave to a director physical possession of the shares with the names of transferees in blank. Thus Wagman, who held the Dallas Holdings shares in trust and had physical possession of the shares fraudulently transferred from the names of nominees who had never in fact been subscribers for the stock of Commodore Business Machines, was in a position as a director of the company that directly contravened the requirements of the exchange at the time the application was made. A comparison of the contemporary listing application⁶ with that now prevailing⁷ shows that much more information as to the true distribution of shares is at present demanded from an applicant, but there is still no protection, as this witness confirmed, against deliberate misrepresentation, short of requiring an affidavit of bona fides from every shareholder. This appeared to Giarrusso to be impossible to obtain, and to be of doubtful value even if such affidavits were forthcoming; moreover deliberate frauds, such as were committed here, would not be revealed without a searching and prolonged investigation if the offenders were prepared to resort to forgery. I am prepared to accept this conclusion, but it is more difficult to accept the failure of the Canadian Stock Exchange to take disciplinary action against Commodore Business Machines once the facts surrounding the application to list its shares were made public. It is true that there is danger of injuriously affecting the investment of innocent people,

⁵Exhibit 2264.

⁶Exhibit 2259.

⁷Exhibit 2257.

but the affairs of this company are still in hands deeply imbrued with the pitch which originally defiled them in 1962, and into which they have been plunged again and again in succeeding years.

Appearance of Don Mills in the Commodore Business Machines Prospectus

Both Irwin Singer and Carl Solomon were questioned before the Commission as to their knowledge of Don Mills. Singer, who was, in the firm of Solomon, Singer & Rosen, the partner particularly engaged in the preparation of the listing application and the prospectus for the public offering of 300,000 shares, said that he did not know the identity of the beneficial owners of the shares attributed to Don Mills in May, 1962, nor, when he wrote his letter of July 26 to the exchange, what Don Mills was. He testified that he had inquired in 1962 and been told by Tramiel, or Kapp, or Morgan that this was a Georgia corporation, and felt that his informant was not inclined to give him any further information, or indeed to explain why the abbreviation "Inc." was not included in its style. Although he was not sure whether he inquired specifically at the time of writing the letter about the five largest shareholders, he recalled feeling, when he received this answer, that it was a facetious one, and that he was being politely told to mind his own business. He had little doubt that Don Mills had some connection with Tramiel or Kapp because of his association of that name with their place of residence. The true significance of Don Mills had not been revealed to him until some six months before he testified, in the course of a civil law suit.¹ Much the same was said by Solomon, who committed himself to the extent of saying that in 1962 he assumed that Tramiel and Kapp had an interest in Don Mills, and that he remembered having been told that it was an American company by Tramiel, or Kapp, or Morgan. Questions on this point were directed to the particular significance of Don Mills in the light of paragraph 29 of the prospectus:²

"No person is known to be, by reason of beneficial ownership of securities of the Company, in a position to elect or cause to be elected a majority of the Directors of the Company. The persons referred to in Paragraph 4 hereof, to which reference is hereby expressly made, could, if they acted as a group, elect or cause to be elected a majority of the Directors of the Company."

Paragraph 4 simply lists the directors as Tramiel, Kapp, Oremland, Wagman, Streit, King and Solomon and the officers as Jack Tramiel, president and Manfred Kapp, secretary-treasurer. Solomon pointed out that the statement contained in paragraph 29 was in accordance with the known facts, and that he was not aware that Tramiel, Kapp and

¹Evidence Volume 106.

²Exhibit 345.

C. P. Morgan could have elected a majority of the board. Whatever in fact was known about Don Mills by Solomon and Singer, it is barely credible that they should not have found out the whole story, except on the assumption that they were deliberately deceived. As to this, Singer made a revealing comment when he mentioned the lack of a symbol attached to the name of Don Mills indicating that it might have been a corporation. The matter becomes more serious when one reflects that, as far as the Canadian Stock Exchange was concerned, the word "Don" might have been the abbreviated Christian name of a Mr. Mills. In any event these two lawyers were at best too compliant, and at worst parties to a deceit practised on the Canadian Stock Exchange, and to a lesser extent on the Securities Commissions of the provinces of Ontario and Quebec. Since they actively assisted Walton, Wagman and Morgan in creating an illusion of public distribution of the shares of Commodore Business Machines, it is very difficult to give them the benefit of any doubts.

Commodore Industries Limited of Jamaica and the Quick Adding Machine Rights

Before leaving the subject of the prospectus, paragraph 26 should be quoted:¹

"No material contract has been entered into by the Company within the two years preceding the date hereof other than contracts entered into in the ordinary course of business carried on or intended to be carried on by the Company, and the contracts referred to in Paragraphs 9 and 21 hereof, to which reference is hereby expressly made, and a contract between the Company and Commodore Industries Limited, made as of July 3, 1961. Pursuant to the terms of this latter contract, Commodore Industries Limited assigned to the Company the exclusive North American rights to assemble and sell 'Quick' Adding Machines, in consideration for either royalty payments based on sales, nor to exceed in the aggregate \$125,000.00, or a cash payment of \$100,000.00. Reference is hereby expressly made to Note 3 to the accompanying Consolidated Balance Sheet as at February 28, 1962. Messrs. Tramiel and Kapp are the owners of all the issued capital stock of Commodore Industries Limited.

Copies of the above-mentioned agreements may be inspected during ordinary business hours at the head office of the Company, 680 King Street West, Toronto, Ontario, at any time during the period of primary distribution to the public of the securities offered hereby."

The reference to paragraphs 9 and 21 is explained by the information, given in paragraph 9, as to loan agreements between the company and Commodore Sales Acceptance, and between Commodore Business Machines Inc. and Commodore Factors, and, in paragraph 21,

¹Exhibit 345.

of the transactions with George Purvin and the acquisition of all the shares of Commodore Business Machines Inc. by the parent company. The remainder of paragraph 26 deals with transactions which were not fully understood at the time of Mr. Wolfman's evidence, and which later investigation enabled counsel to explore further in his examination of Jack Tramiel. This examination as a whole extended over a period of four days, and was a most laborious process because it involved putting a multitude of documents to Tramiel in order to refresh, and indeed to discipline his volatile memory. By minute of the board of directors of Commodore Portable Typewriter,² said to consist of Tramiel, Kapp, Wagman, King, Medland and Streit, dated July 3, 1961 and signed by Tramiel and Kapp, the secretary, who was Kapp, was reported as advising the meeting about negotiations which he had conducted with Commodore Industries Limited, a company incorporated under the laws of Jamaica, for the assignment to Commodore Portable Typewriter of all the rights of Commodore Industries Limited in an agreement entered into by it with Typewriter Sundries Company Limited of the United Kingdom. Two agreements, one between Commodore Industries and Typewriter Sundries, and the other a draft agreement between Commodore Industries and Commodore Portable Typewriter, were expressed to have been added to the minutes as Schedules A and B, but only the latter survives. It, however, recites the date of the former as having been June 15, 1961 and provides for the assignment by the Jamaican company to Commodore Portable Typewriter of the former's North American rights to the Quick adding machine on the basis of royalties for each machine sold for a period of five years, but in any event not to exceed total payments of \$125,000 in Canadian funds, and confers a right on the assignee to buy this interest at any time for \$100,000.

The agreement was signed for Commodore Industries by Manfred Kapp, and for Commodore Portable Typewriter by Jack Tramiel, and both Tramiel and Kapp agreed that they owned between them all the shares of Commodore Industries. Just what were the terms of the original agreement with Typewriter Sundries, if it ever existed, can only be surmised, and at one point Tramiel suggested that Markus had given him these rights for no consideration at all. Note 3 to the consolidated balance sheet as at February 28, 1962, included in the prospectus, says that "the collectibility of advances to Commodore Industries Limited—Jamaica is dependent upon the revenue the Jamaican Company would receive from a contract in which the franchise rights of the 'Quick' adding machine are leased to Commodore Business Machines (Canada) Limited and its subsidiary". The advances referred to are shown under the heading "other assets" on the balance sheet as amounting to \$92,097.37, and include travelling expenses of Tramiel to and

²Exhibit 322.

from Jamaica which had been charged to Commodore Portable Typewriter. Tramiel maintained that the Jamaican company, the books and records of which he had left in Jamaica, was incorporated in 1960 at the time when the rights to the Quick adding machine had first been acquired from Markus, that Commodore Industries was assembling typewriters in Jamaica and selling them in the United States and Canada under an advantageous tax arrangement with the Jamaican government and that Commodore Industries had suffered a loss in the process. There seems to be no doubt that some such assembling operation was carried on in Jamaica, and that Commodore Portable Typewriter had indeed made advances to a company wholly owned by two of its directors, a debt which was subsequently extinguished by the transfer to Commodore Portable Typewriter of the Quick adding machine rights which should have enured to it in the first place. A question arises as to how much was known about the Jamaican operation by the other directors of Commodore Portable Typewriter. King recalled knowing that Tramiel and Kapp had started such an enterprise with a view to bringing typewriter parts from Czechoslovakia and assembling them in Jamaica, and that there were supposed to be tax concessions involved. He believed that both he and Douglas Annett knew that Tramiel and Kapp had made an investment in Jamaica, but not that they were the sole owners of the Jamaican company. None the less, he signed the prospectus which disclosed that fact. Morgan had told him that the Jamaican company was a failure and that \$100,000 was needed to pay for the rights to the Quick adding machine acquired by it. Medland simply did not remember the meeting of July 3, 1961, but remembered Jamaica being discussed in some conversation about Tramiel, Kapp, Morgan and two other people having built a plant there because of the favourable tax arrangements conceded by the Jamaican government. The story of the rights to distribute and manufacture the Quick adding machine must be resumed later, but thus far the whole purpose of the agreement authorized by the meeting of July 3, 1961 appears to have been the rescue of Tramiel and Kapp from the unprofitable results of their own enterprise by the company to which they were bound to devote all their efforts, and which had borrowed some \$175,000 from Medland, King and Streit, not to mention much larger amounts from Atlantic Acceptance.

The Don Mills Shares

It has been seen that C. P. Morgan secured for himself and his associates, with money advanced by Atlantic, some 85% of the 300,000 shares of Commodore Business Machines set aside for a public offering. It remains to be seen how the Don Mills block of 125,000 shares, of which 112,500 were subject to escrow, were disposed of. The essential information is to be found in the working papers of Walton, Wagman &

Co., copies of which were apparently distributed to the principals, and one of which was supplied by Manfred Kapp to Mr. Wolfman.¹ It is headed "Don Mills statement", and contains a list of persons and the number of shares sold to each at prices which range from \$1.70 to \$2.50 per share. There is a minor discrepancy in that the list of names headed "C. P. Morgan" does not contain the name "Judge Rodgers" who was shown on the other list as being entitled to 50 shares at \$2, for which \$63 had apparently been paid but the shares not delivered. On the assumption that this purchase was not completed and \$63 repaid, it appears that the total number of shares sold was 54,792 for \$130,897, 18,042 free shares and 36,750 escrowed shares being delivered.

Most of the purchasers of the free shares were individuals and paid \$1.70 per share or \$2 for escrowed shares, the only exception being Martha Prokoph who paid for 100 free shares at a price of \$2.50 per share. Martha Prokoph was Manfred Kapp's book-keeper, and it is not clear why she was singled out for this distinction. The remaining purchasers are two in number and both corporations. Pearlsound Distributors bought 10,592 free shares at \$2.50, paying \$26,480 in cash, and Evermac Office Equipment 17,500 shares for \$52,500, equivalent to \$3 per share and paid for in a manner to be described below, the shares being escrowed. Next to this schedule is a "summary of share distribution", indicating that 5,542 more free shares than Don Mills' available 12,500 had been delivered, and that this deficiency had apparently been made up by an exchange of the same amount of escrowed shares. The balance of these is recorded as 70,208, and below this entry appears a detail of distribution as follows:

"C. Powell Morgan	23,403
Jack Tramiel	23,403
Manfred Kapp	23,402
	<u>70,208"</u>

This is followed by a heading, "Summary of Cash Distribution", showing total cash received of \$130,897.11 from which is deducted principal and interest on the loan to Don Mills from Aurora Leasing in the amount of \$106,604.33, leaving a balance of \$24,292.78 distributed to C. Powell Morgan in the amount of \$8,097.60, Jack Tramiel \$8,097.59, and Manfred Kapp \$8,097.53. Aurora was not so fortunate with its loan of \$94,500 to Don Mills for the purchase of the Streit shares from Valley Farm and Enterprises, \$75,034 of which remained unpaid at June 17, 1965.

The source of funds for the purchases of these shares by Pearlsound Distributors, then owned by N.G.K. Investments, and by Evermac Office Equipment was inevitably Commodore Sales Acceptance, which issued

¹Exhibit 2159.

cheques to Pearlsound for \$28,000 dated August 15, 1962² and for \$53,000 to Evermac on the same day.³ Pearlsound issued its cheque for \$26,480 to Don Mills,⁴ and Evermac paid \$52,500 to Don Mills by cheque drawn on its behalf by Kapp⁵ and endorsed "Don Mills per M. Kapp", both cheques being deposited to the credit of Aurora. Evermac, however, did not get its 17,500 shares, but assigned its right to them to N.G.K. Investments in due course in exchange for all the shares of Pearlsound. Thus Aurora was repaid to the extent of \$78,980 by these two companies with money borrowed from Aurora without security, and the balance of the loan was discharged by sales of shares to some 38 individuals who, Kapp averred, were mostly employees of Commodore Business Machines. Pearlsound, as a subsidiary of N.G.K. Investments, was under the direction of C. P. Morgan and Evermac was owned by Tramiel and Kapp.

A brief summary of the operations of Don Mills would, at this point, not be out of place. Don Mills, as already noticed, acquired 250 of the old shares of Commodore Portable Typewriter by borrowing \$100,000 from Aurora, which Commodore Portable Typewriter treated as a loan, and repaid it by issuing these shares which became 125,000 shares of Commodore Business Machines. They were subject to an escrow agreement whereby they were not supposed to be sold other than to parties to the agreement and to employees of Commodore Business Machines who had adhered to it, only 12,500 shares remaining free. On or about August 15, 1962 Don Mills sold 54,792 of these shares to some 40 purchasers who were largely individuals buying shares in small lots, but included Pearlsound which bought 10,592 free shares at \$2.50 a share, and Evermac which bought escrowed shares at \$3 a share, the latter purchase, at least, being contrary to the provisions of the escrow agreement. The purchases by these two companies, the affairs of which were controlled by Morgan, Tramiel and Kapp, put \$78,980 into their hands by borrowing from Commodore Sales Acceptance, a company entirely under Morgan's control, and this amount was paid, together with a balance derived from the small subscriptions, to Aurora Leasing Corporation, a company which was effectively in the hands of Morgan, Walton and Wagman, and extinguished the original loan made by Aurora to Morgan, Tramiel and Kapp. As a result Morgan, Tramiel and Kapp were each entitled to one-third of the 70,208 shares, still in escrow, free in their hands, and to an equal division of \$24,292.78. All of this is accomplished in secrecy, with concealment from the other directors of Commodore Business Machines made easy by what must be fairly described as a singular lack of curiosity on their part, assisted by the connivance of the company's solicitors, Messrs Solomon, Singer & Rosen.

²Exhibit 2160.

³Exhibit 2162.

⁴Exhibit 2161.

⁵Exhibit 2163.

The distribution of cash mentioned above was not complete until January 29, 1963, when Morgan received a cheque for \$8,097.60 drawn by Kapp on account No. 2327 which he shared with Tramiel at the Toronto-Dominion Bank at King and Bathurst Streets.⁶

Associated Canadian Holdings Limited

The range of trading in Commodore Business Machines shares, in an exceptionally thin market, was from \$2.70 to \$3.05 in July of 1962, \$2.75 to \$4.25 in August, \$4.20 to \$4.50 in September, \$4 to \$4.50 in October, \$4 to \$4.25 in November, \$3.90 to \$4.25 in December and, in January, 1963, \$4 to \$4.45. The first release of escrowed shares occurred on April 2, 1963, according to a letter from the Eastern Trust to Solomon, Singer & Rosen¹ affecting 154,800 shares, and was completed on July 2, according to the tenor of a second letter of that date with respect to 309,600 shares.² C. P. Morgan was now concerned with controlling the market for Commodore Business Machines' shares, consequent upon the release of these very substantial holdings, particularly of the 315,000 shares which he and his wife, the Tramiels, Kapps and Silbermans were now free to dispose of. His solution, which with some difficulty he persuaded Tramiel and Kapp to adopt, was the incorporation of Associated Canadian Holdings Limited on June 27, 1963.³ This was a private Ontario company with authorized capital of 1,000,000 preferred shares, with a par value of \$5 each, and 1,000,000 no par value common shares. The five permanent directors after incorporation were Tramiel, Kapp, Wagman, Solomon and Singer, Tramiel being president, Kapp vice-president and treasurer and Singer secretary. On July 10, a day which produced transactions of considerable size and great complexity, the decision was taken for Associated Canadian Holdings to buy Commodore Business Machines shares held by the Morgan, Kapp, Tramiel and Silberman families, W. L. Walton and Harry Wagman, by issuing in exchange one common share and one-half of one preference share for each share of Commodore Business Machines purchased. The Morgans and Silbermans gave up, on this basis, all of their shares released from escrow, and the Tramiels and Kapps a portion only, but sufficient to secure for them a position in Associated Canadian Holdings of some 60% of the issued stock. The financial statement of the company prepared by Walton, Wagman & Co. as at July 15, 1963, under the heading of "investments at cost" of that date, includes 227,902 shares of Commodore Business Machines and 100,000 shares of The Dale Estate Limited. Two letters from the company to C. M. Solomon, signed by Jack Tramiel and dated February 13 and February 27, 1964⁴, set out

⁶Exhibits 2164 and 2164.1.

¹Exhibit 858.1.

²Exhibit 858.2.

³Exhibit 369.

⁴Exhibits 823.1 and 823.2.

COMMODORE BUSINESS MACHINES

the names of the shareholders and the amounts of preferred and common stock attributed to them, and should be noted because, in the first letter, W. L. Walton is listed as having 7,500 preferred shares and 15,000 common shares. The second list disposes of these by dividing them equally between C. P. Morgan and Harry Wagman.

	<i>"No. of Shares Preferred \$5.00</i>		<i>No. of Shares Common \$1.00</i>		<i>Total</i>
	<i>Amount</i>		<i>Amount</i>		
M. Kapp	42,178	210,890.00	84,356	84,356.00	295,246.00
E. Kapp	5,850	29,250.00	11,700	11,700.00	40,950.00
J. Tramiel	43,679	218,395.00	87,357	87,357.00	305,752.00
H. Tramiel	5,850	29,250.00	11,700	11,700.00	40,950.00
B. Silberman	4,050	20,250.00	8,100	8,100.00	28,350.00
R. Silberman	8,325	41,625.00	16,650	16,650.00	58,275.00
C. P. Morgan	26,118	130,590.00	52,237	52,237.00	182,827.00
M. Morgan	7,500	37,500.00	15,000	15,000.00	52,500.00
H. Wagman	14,250	71,250.00	28,500	28,500.00	99,750.00
	<u>157,800</u>	<u>789,000.00</u>	<u>315,600</u>	<u>315,600.00</u>	<u>1,104,600.00"</u>

The intrusion of the Dale Estate shares (which for the moment will mean "The Dale Estate Limited") into a portfolio otherwise devoted to those of Commodore Business Machines must now be accounted for. The books of Associated Canadian Holdings⁵ show that the company issued its own shares to the value of \$350,000 to Jack Tramiel and Manfred Kapp, and received in exchange 100,000 Dale Estate shares and \$50,000 in cash. Tramiel and Kapp received the \$50,000 from the Trio account at the Guaranty Trust Company, according to the passbook of that account,⁶ by a cheque for that amount. Their acquisition of the 100,000 Dale Estate shares is explained by a handwritten memorandum from the files of Walton, Wagman & Co.⁷ which begins "100,000 C.B.M. tax paid sold to Associated Canadian Holdings for \$490,000". It continues "J. Tramiel trades 100,000 Dale and \$50,000 to A.C.H. for 50,000 A.C.H. preferred and 100,000 A.C.H. common". Just above this is a note to the effect that 100,000 shares of Commodore Business Machines were traded to the "Trio" for 100,000 Dale, acquired by "H.W." buying 70,000 Dale shares from Dallas Holdings for \$192,500, 26,225 shares from the Trio for \$80,000 and, finally, 3,775 shares from Barrett, Goodfellow & Co. and Dallas Holdings for \$11,325, the total of 100,000 shares of Dale Estate being assigned a cost of \$283,825.

⁵Exhibit 2165.

⁶Exhibit 807.

⁷Exhibit 2166.

The Trio account passbook provides evidence of these payments showing a withdrawal in favour of Dallas Holdings, "re 70,000 Dale at \$2.75 \$192,500"; there is another entry showing \$80,000 to "C.I.B.C.", this recording a payment to the Canadian Imperial Bank of Commerce to release the 26,220 shares of Dale Estate pledged against a loan to Morgan, Walton and Wagman; a further entry reads, "Barrett, Goodfellow & Co. 2,775 Dale at \$2.75, \$70,631.25". Thus far Morgan, Walton and Wagman had given Tramiel and Kapp 100,000 shares of Dale Estate and \$50,000 in cash, and had received 100,000 shares of Commodore Business Machines, Tramiel and Kapp getting as many shares of Associated Canadian Holdings for their Dale Estate shares plus \$50,000 as they would if they had delivered 100,000 shares of Commodore Business Machines directly to Associated Canadian Holdings. But then the Trio took their 100,000 Commodore Business Machines shares and sold them to Associated Canadian Holdings for \$490,000 which was paid by cheque dated July 10 from Associated Canadian Holdings to the Guaranty Trust Company⁸ in the amount of \$490,000, the deposit of which was recorded in the Trio account passbook. The deposit slip contains handwritten notations reading "exchange 100,000 shares Dale, \$3 = \$300,000 — cash \$50,000 Tramiel and Kapp"; there follows a total of \$350,000, and the note continues "sold 100,000 C.B.M. at \$490,000—gain \$140,000". There is a similar legend in almost the same words at the top of the page of the passbook in which the deposits and withdrawals are recorded.⁹ Although the recorded profit is one of \$140,000 for the Trio, this is on the basis of attributing a value to the Dale Estate shares of \$3 each, but since it has been seen that the 100,000 Dale Estate shares were assembled at a cost of \$283,825, the profit of Morgan, Walton and Wagman was really in excess of \$156,000.

It is almost unnecessary to say that this company, Associated Canadian Holdings, borrowed the \$490,000 from Aurora Leasing Corporation, and the statement of its account with the Bank of Nova Scotia shows a deposit of \$750,000 on July 10 for which a promissory note, bearing the same date, was given to Aurora by Associated Canadian Holdings, signed on its behalf by Manfred Kapp and Harry Wagman, and bearing interest at 8½ %.¹⁰

The Five Wheels Transaction and its Reversal

At the conclusion of Mr. Wolfman's evidence on May 19, 1966, Mr. Shepherd stated to the Commission that the remainder of the events of July 10, 1963 were exceedingly complex. It transpired that Associated Canadian Holdings paid over the \$750,000 borrowed from Aurora

⁸Exhibit 2167.

⁹Exhibit 807.

¹⁰Exhibits 2168 and 1639.1.

Leasing to Commodore Business Machines, recording it as a loan to the latter, and Commodore Business Machines paid it, in turn, to a company called Five Wheels Limited, a public company engaged in the business of leasing automobiles and trucks, the principal shareholder of which was Albert A. Shelman.¹ The major portion of the \$750,000 thus moving physically from hand to hand on July 10, was provided by Aurora Leasing from advances made by Commodore Sales Acceptance. Commodore Business Machines, by paying it to Five Wheels, acquired 100,000 common shares of that company as indicated by its ledger sheet No. 159.² These shares became the subject of an agreement,³ dated July 4, 1963, in the form of a letter addressed to C. P. Morgan by one Allen S. Manus, a Toronto born and trained stock promoter who, with his brother Cecil, has provoked the interest of law enforcement agencies in the United States, and even in the Bahama Islands, but whose operations must await examination in Chapter IX dealing with the investment of Atlantic money in the Lucayan Beach Hotel and allied enterprises. The gist of the agreement, in so far as Commodore Business Machines is concerned, is that, firstly, the parties agreed to exchange 100,000 shares of Commodore Business Machines for the same number of the common shares of Five Wheels; secondly, the company's 100,000 shares of Five Wheels were to be deposited in a voting trust, pursuant to agreement with the Crown Trust Company, together with 100,000 shares registered in the name of Shirley Shelman and 100,000 shares belonging to Molly Corporation, a company promoted by the Manus brothers, to form a block of shares to be voted together in accordance with instructions to the Crown Trust Company from any two of Commodore Business Machines, Molly Corporation or Mrs. Shelman; thirdly, Five Wheels was to hold a special general meeting of its shareholders to authorize a split in its stock of two shares for one, and an increase in the board of directors from four to nine, four constituting a quorum. C. Powell Morgan was to be chairman of the board, Albert A. Shelman president and Jack Tramiel and Allen S. Manus, among others, to be directors. The agreement was signed by C. P. Morgan, Allen S. Manus and Shirley Shelman.

Although this transaction was completed on July 10, the purchase of an interest in Five Wheels was not raised with the board of Commodore Business Machines until July 16, and at this meeting the chairman, C. P. Morgan, was asked to obtain further information and report back. There is no further reference to the matter in any succeeding minute. Then it became known to Aubrey Medland who, incredible as it may seem, had read about its completion in a newspaper. Medland called Douglas Annett, also a director at the time, and his reaction was equally

¹Exhibit 2169.

²Exhibit 2170.

³Exhibit 2171.

indignant. Medland's second call was to his own broker with instructions to start selling the shares of Commodore Business Machines. He knew that he would hear from somebody fairly quickly, and, indeed, shortly after the selling began, he received a telephone call from C. P. Morgan who had learned he was selling to the point of breaking the market. Morgan went to see Medland, admitted that it was all a mistake and received Medland's undertaking to desist from selling if the deal were cancelled. Medland said he had nothing particular against Five Wheels, but he did not like the people connected with it and, as he remarked, "one recognizes some of the names". He objected principally to the failure to inform the directors as to what had transpired, and this, he said, was his one major difference of opinion with Morgan, Tramiel and Kapp during his association with Commodore Business Machines.⁴

The method of reversing the transaction adopted by Morgan and Tramiel was to have Commodore Business Machines and Associated Canadian Holdings enter into a "put option contract", giving the former company the right to sell its 100,000 shares of Five Wheels at a price of \$7.50 per share at any time, up to and including October 15, 1963 to Associated Canadian Holdings.⁵ Five Wheels had paid \$500,000 to Associated Canadian Holdings for its 100,000 shares of Commodore Business Machines, giving the former a profit of \$10,000 from its purchase of these shares from the Trio at \$490,000, and a deposit slip⁶ shows a deposit in the Bank of Nova Scotia account of Associated Canadian Holdings on July 10 of \$550,000. The slip is marked to identify \$500,000 of this as coming from Five Wheels in relation to the purchase of 100,000 shares of Commodore Business Machines, and \$50,000 from "H. Wagman". This was the same \$50,000 paid by Wagman to Tramiel and Kapp, and by them to Associated Canadian Holdings. This is followed by a notation showing \$50,000 plus 100,000 common shares in "Dale Estates Ltd." exchanged for 100,000 common and 50,000 preferred shares in Associated Canadian Holdings. The reversal of the Associated Canadian Holdings loan to Commodore Business Machines in the amount of \$750,000 occurred in November as a result of the exercise of the put option by Commodore Business Machines, and the resulting acquisition of these shares of Five Wheels by Associated Canadian Holdings for that amount.

Summary of the Events of July 10, 1963

An effective summary of the events of July 10, as modified by the unforeseen rejection of the investment in Five Wheels by the "outside"

⁴Evidence Volume 92.

⁵Exhibit 823.3.

⁶Exhibit 2172.

directors of Commodore Business Machines, was put by Mr. Shepherd in interlocutory form.¹

“Q. Now, this being a somewhat complicated matter I would like to see if I have it right. I have it that all the steps occurred on the 10th of July, 1963; is that correct?

A. That is correct.

Q. And the first thing that happened is that Aurora borrows \$750,000, or the greater part thereof from Commodore Sales Acceptance; is that correct?

A. That is correct.

Q. And then, Aurora—when I say then, I appreciate it all happened on the same day, but taking it in order, Aurora then loaned \$750,000 to Associated Canadian Holdings; is that correct?

A. That is true.

Q. Associated Canadian Holdings loaned the \$750,000 to Commodore Business Machines; is that so?

A. That is correct.

Q. Commodore Business Machines pays the \$750,000 to Five Wheels Limited and receives 100,000 common shares of Five Wheels Limited?

A. That is correct?

Q. And stopping there for a moment. When the purchase of 100,000 shares of Five Wheels Limited comes before the Board of Directors of Commodore Business Machines for the first time, so far as the minutes disclose on the 16th of July, 1963, the investment of this sum is not authorized, but that the President is directed to go back and get further information for the Board; is that so?

A. That is correct.

Q. So, on that date, the 16th of July, 1963, or by a document bearing that date, Associated Canadian Holdings grants to Commodore Business Machines (Canada) Limited a put option contract whereby Associated Canadian Holdings binds itself to purchase the shares of Five Wheels for \$750,000 at any time up to the 15th of October, 1963, purchase from Commodore Business Machines?

A. That is correct.

Q. Five Wheels Limited now has \$750,000 and it pays \$500,000 to Associated Canadian Holdings. And it receives in return for that sum 100,000 shares of Commodore Business Machines?

A. That is correct.

Q. Associated Canadian Holdings got the 100,000 shares of Commodore Business Machines by purchasing on that same day from—what Mr. Wagman refers to as the trio, for \$490,000; is that correct?

A. That is correct.

¹Evidence Volume 36, pp. 4892-5.

Q. And the trio got these shares of Commodore Business Machines by purchasing them from Messrs. Tramiel and Kapp for 100,000 shares of the Dale Estate Limited plus \$50,000 in cash. And the parties attributed a value of \$300,000 to the Dale Estate shares?

A. That is correct.

Q. So, that the effect of the transaction then was to put \$250,000 net cash into Five Wheels Limited, to put \$10,000 net cash into Associated Canadian Holdings Limited, and to put \$140,000 net cash into the hands of the trio. If one adopts the parties declaration that the shares of the Dale Estate were worth \$300,000, although they didn't cost the trio \$300,000?

A. That summarizes it exactly."

Five Wheels employed the \$250,000 thus obtained, according to the terms of a letter dated November 30, 1963 to Grand Bahama Development Company Limited and the Grand Bahama Port Authority Limited at Freeport, Grand Bahama Island,² by advancing \$250,000 in United States funds to its wholly owned subsidiary Five Wheels of Grand Bahama Limited "towards the cost of dredging and the preparation of the marina site on Lucayan Beach". This becomes part of another story. The Trio's profits from the transactions of July 10 were used to extend a loan of \$100,000 to a company by the name of Jacroy Canada Limited, a subsidiary of the Symphony Paint Company of Cleveland to which Atlantic Acceptance had lent substantial sums through Commodore Factors, amounting to an aggregate of over one and a half million dollars by July 17, 1965, as described in Chapter XIV. For this a note was given to "H. Wagman in trust" bearing interest at 6% and payable on demand, dated July 11 and signed for the borrower by L. D. Koryta as president. The note is marked "pending stock issuance 7/11/63 planned".³ This loan was not repaid and is the subject of a claim by Harry Wagman against the trustee in bankruptcy of Jacroy Canada Limited. On September 11, \$50,000 was paid out of the Trio account to Masco Construction Company Limited for a purpose which, again, will appear in Chapter IX dealing with the affairs of the Lucayan Beach Hotel.

According to C. P. Morgan this was his first encounter with Allen Manus, and the beginning of an association which was, perhaps more than any other, an immediate cause of the disaster which befell Atlantic Acceptance Corporation. He testified⁴ to the effect that the introduction was made at a meeting called by Albert Shelman of Five Wheels at the Royal York Hotel in Toronto, attended also by Jack Tramiel. Shelman was interested in extending his company's car-leasing operations to the Bahama Islands, and Tramiel was at that time contemplating leasing

²Exhibit 2173.

³Exhibit 1704.1.

⁴Evidence Volume 26.

business machines across Canada. Morgan described the reciprocal purchases of stock by Five Wheels and Commodore Business Machines as a deal involving only Five Wheels and Associated Canadian Holdings, but went on to mention the presentation of the transaction to the board of Commodore Business Machines, and its frustration by the objection of Carman King without referring to Medland or Douglas Annett. Under the circumstances prevailing at the time he gave his evidence to the Commission some confusion is understandable, and it would appear to be clear that it was at first contemplated that Commodore Business Machines would be directly involved with Five Wheels, that the agreement had been made in all respects before the Commodore Business Machines board was consulted, and that the introduction of Associated Canadian Holdings was necessary to carry out the terms of the agreement made on July 4 with Shelman and Manus. For the first time Morgan and Tramiel had over-estimated the complaisance of their fellow-directors.

* * * *

The Dale Estate Underwriting

Before leaving the events of July 10, 1963 a brief excursion must be made into the affairs of the Dale Estate, the shares of which played a vital part in what transpired. Their appearance in the hands of Morgan, Walton and Wagman raises the curtain on a financial coup involving characteristic misuse of Atlantic funds and considerable profit to the Trio. According to Morgan, the Dale Estate underwriting was "brought to me by Bill Walton", and Walton testified that at first it was solely his idea, but that the enterprise was too big for him to handle and he had called upon Morgan for assistance. Dale Estate Limited was a closely held family corporation in which was vested the assets of a well known firm of flower-growers in Brampton, Ontario. On July 25, 1961, Morgan obtained options from all the shareholders of Dale Estate Limited to purchase the 4,480 outstanding shares at \$325 per share. According to instructions given to Carl Solomon in a letter dated September 26,¹ Morgan assigned the benefit of these options to Walton, and on October 12 they were exercised and payment made in the aggregate amount of \$1,455,036.76 through the trust account of Solomon & Samuel. The shares were transferred principally to Carl M. Solomon in trust to the number of 4,474, one share each remaining in the hands of D. M. Dickson, William Brydon and W. A. Beatty, Sr. representing the previous ownership and L. Murray Eades, David Samuel and Carl M. Solomon representing its successor, but, in any event, apparently for the benefit in every case of a Bahamian company known as Oceanic Investment Company Limited. This company was incorporated on September 1,

¹Exhibit 4434.1.

1961 at the instance of the Bank of Nova Scotia Trust Company (Bahamas) Limited, and through the agency of a solicitor in Nassau by the name of Stafford L. Sands, later to become notorious as Sir Stafford Sands, C.B.E., Minister of Finance and Tourism in the United Bahamian Party's government of the Bahama Islands. Its shares were purchased for the Trio by W. L. Walton, according to information given to the Commission, after he and his solicitor Hubert J. Stitt had conferred with officials of the Bank of Nova Scotia in Toronto on October 12, and in New York on Sunday, October 15. The company enjoyed brief life; it was struck off the register on August 31, 1962, having served its purpose in connection with the part played by Morgan, Walton and Wagman in the public offering of shares of a new company called, confusingly enough, The Dale Estate Limited. The documents available in the office of the Registrar General for the Bahama Islands in Nassau, copies of which were supplied free to the Commission in this case, as in every case when such documents were required, contain no information as to the activities of the company, beyond recording a change of address on October 30, 1961 from 309 Bay Street, Nassau, the chambers of Stafford Sands, to that of the Bank of Nova Scotia Trust Company. On October 12, a cheque for \$2,000 was issued from the Trio account, and its purpose, if not its destination, was indicated on the cheque stub² by the words "Oceanic Investment". When Solomon & Samuel reported on their work for this company they addressed their communications to it at 62 Richmond Street West in Toronto.³

In his letter to Solomon of September 26, Walton had said that he would put the former in funds necessary to exercise the option in the amount of \$1,456,000. The funds, of course, came from Commodore Sales Acceptance, which advanced them to C. M. Solomon in trust without security, the loan being recorded in the books of Commodore Sales Acceptance⁴ in an account entitled "Notes receivable—C. M. Solomon in trust". The interest rate was a mere 8½ %. Solomon held this very large amount of money in trust for Oceanic Investment and, after disbursing it to the Dale Estate shareholders, paying the security transfer tax on the subsequent sale by Oceanic Investment described below and paying legal fees to L. Murray Eades and to his own firm, remitted the balance of \$11.47 to Oceanic Investment finally on December 19. On October 19, Oceanic Investment sold the 4,480 shares of Dale Estate to the following purchasers for the sum of \$1,600,000:

Yarrum Investments Limited	1,792 shares
Annett & Company Limited	1,344 shares
Federal Farms Limited	1,344 shares

²Exhibit 806.

³Exhibit 1697.1.

⁴Exhibit 953.

Yarrum Investments Limited had been incorporated on June 23, 1959 as Colonial Sundry Wholesalers Limited, the permanent officers and directors of which were W. L. Walton, Harry Wagman and E. A. Jeffreys. The company was inactive until it was employed by the Trio to make this purchase of Dale Estate shares from their Bahamian company, and never had any assets except paid-up capital of \$3 until it made the purchase. The Toronto-Dominion Bank, through its King and Yonge Streets Branch in Toronto, saw fit to lend this company (still called Colonial Sundry Wholesalers Limited until its name was changed to Yarrum Investments Limited on November 1, 1961) the large amount of \$640,000 against the security of 1,786 shares of Dale Estate registered in the name of Carl M. Solomon in trust, although personal guarantees were taken from Morgan, Walton and Wagman for \$213,000 each. The whole amount of this loan was paid out on the day of its deposit on October 19 to Carl M. Solomon in trust, who paid it on the same day out of his trust account to Commodore Sales Acceptance.⁵ Thereafter Colonial Sundry Wholesalers on October 25 drew another cheque on their account in the Toronto-Dominion Bank, now divested of funds, in the same amount of \$640,000 payable to the Bank of Nova Scotia Trust Company (Bahamas) Limited. The payee in this case was apparently doing the banking for Oceanic Investment, and its banking was in turn done by its parent the Bank of Nova Scotia in an account where withdrawals and deposits are simply entered as such, the documentation of deposits and withdrawals which might identify customers of the trust company not being available, at least in Ontario. This payment of \$640,000 was made in conjunction with payments by Annett & Co. and Federal Farms Limited to acquire from Oceanic Investment 1,344 shares of Dale Estate apiece. On October 30, the \$640,000 came back into the overdrawn account of Colonial Sundry Wholesalers at the Toronto-Dominion Bank, and the Bank of Nova Scotia's ledger card for its Bahamian trust company⁶ shows that, of the \$963,200 deposited therein and representing the combined payments of Federal Farms and Annett & Co., \$825,000 had left it on October 27 and was deposited in the bank's current account with Commodore Sales Acceptance.⁷ This payment, together with the \$640,000 borrowed from the Toronto-Dominion Bank by Colonial Sundry Wholesalers and paid by Solomon & Samuel to Commodore Sales Acceptance, repaid with interest the whole amount of the latter company's original advance to C. M. Solomon in trust.

The stage had now been set for the underwriting of the shares of a new company by Morgan's pliant and still-favoured stockbrokers, Annett & Co., and the attaining of a suitable interest by Federal Farms

⁵Exhibits 1697.5 and 1045.3.

⁶Exhibit 4446.

⁷Exhibit 4450.

which was to operate the Dale Estate undertaking. This was The Dale Estate Limited, incorporated by letters patent in Ontario on October 20, 1961 to acquire the assets and undertaking of Dale Estate Limited, the shares of which were now in the hands of Annett & Co., Federal Farms and Yarrum Investments, for a total consideration of \$1,610,000, provided by a first mortgage of \$500,000 on the Brampton property given to British Mortgage & Trust Company, \$350,000 in 7¼ convertible debentures bought by Federal Farms and \$1,060,000, the product of an underwriting of 400,000 treasury shares at \$2.65 per share by Annett Partners Limited, later offered to the public at \$3 per share. The old Dale company was in effect paid \$1,460,000 in cash, and the balance by allotment of 160,000 common shares of the new company valued at \$1 per share. Of this Yarrum Investments received \$642,583.28, including 60,000 shares of The Dale Estate Limited valued at \$1 per share, on the distribution of the assets of the old company ratably amongst its shareholders on December 20. According to the analysis of Mr. H. B. Walker of Touche, Ross, Bailey & Smart, who presented the accounting evidence to the Commission on May 18, 1967,⁸ Yarrum Investments lost \$3,755 on this distribution, mainly as a result of having to pay interest on its bank loans. Yarrum's loss disappears if the 60,000 shares of The Dale Estate Limited in its hands are valued at either \$2.65 per share, the price at which Annett Partners bought them, or \$3 per share, the price at which they were offered to the public, and becomes a profit of either \$95,250 or \$116,250 respectively.⁹ Oceanic Investment made a profit of \$137,435. The Toronto-Dominion Bank loan of \$640,000 was eventually paid off in September, 1962, and was substantially reduced by cash payments arising out of the distribution of the assets of the old Dale Company to its shareholders out of which Yarrum Investments acquired \$580,000 in cash.

This note on the participation of Morgan, Walton and Wagman in The Dale Estate Limited underwriting does less than justice to Mr. Walker's careful and well illustrated analysis of the evidence; nor does it take into account subsequent dealings in the escrowed shares acquired by Yarrum Investments between Yarrum and two other Trio companies, Canada Motors Products (Toronto) Limited and Dallas Holdings Limited, which occurred between their original acquisition and the time when they were required for assembling the 100,000 shares which were employed in the transactions of July 10, 1963. At least two footnotes must be annexed to this account.

(1) From the working papers of Walton, Wagman & Co. there is a memorandum in the handwriting of W. L. Walton, dated March 17,

⁸Evidence Volume 111.

⁹Exhibit 4465.

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1962, entitled "Schedule re cost of Dale shares."¹⁰ This is made up as follows:

"60,000 subscribed at \$1.00 = 60,000 — paid by Yarrum	
{ 10,000 re W.P.G. at 1.00 = 10,000 }	} — paid by Hilltop
{ _____ re N.G.K. for 9,500 }	
70,000 Escrowed Shares	\$79,500 Average cost \$1.14 per share"

The memorandum goes on to refer to 50,000 shares bought through the Canadian Imperial Bank of Commerce at \$2.70 a share for a total of \$135,000, a purchase made on the instructions of C. P. Morgan on December 8, 1961 from the underwriters, and records subsequent sales which result in a balance of shares still held of 23,900, at an average cost of \$2.36 per share. The reference to "10,000 shares re W.P.G." illustrates the purchase for cash by Hilltop Holdings Limited, a holding company of Walton's, of 10,000 of the shares of The Dale Estate Limited from the old company, to fulfil a promise made to Wilfrid P. Gregory that he would receive 10,000 of the shares of the new Dale company at a price of \$1 per share. When it was drawn to Gregory's attention by Carman King that his position as president of the trust company, which was mortgagee of the company's property, was not consistent with his receiving its shares at a very substantial discount, he condescended to accept free from C. P. Morgan a convertible note of N.G.K. Investments for \$10,000, which evidently cost the Trio \$9,500. The 10,000 shares purchased by Hilltop Holdings which were held in trust by Carl M. Solomon were subsequently registered in the name of Gee & Co. as nominee for the Canadian Imperial Bank of Commerce, and pledged to that institution, eventually being released on December 4, 1964 to Associated Canadian Holdings.¹¹ Forty percent of the \$10,000 in cash paid to Dale Estates Limited came back to the Trio through Yarrum Investments on the final distribution of assets of that company.

(2) On November 1, 1961 the Trio account at the Guaranty Trust Company received a payment of \$110,000, and on March 1, 1962 another of \$13,500. In between, and on November 15, 1961, a cheque for \$15,000 was paid out of account No. 9771 of the Guaranty Trust Company, the Walton, Wagman & Co. trust account, and as to this payment the only clue to its destination is an unsworn verbal statement made by Walton, when in custody, that it was paid to Morgan "for expenses". The amount of \$110,000, and that of \$15,000 which was necessary to make the payment of November 15, are traceable to a deposit in the Walton, Wagman & Co. trust account of \$125,000 made on November 1, confirmed by a deposit slip of that date bearing the

¹⁰Exhibit 1702.1.

¹¹Exhibit 4461.

notation "B.N. Scotia \$125,000".¹² On the following day there is a debit of \$110,000 and a corresponding deposit in the Trio account pass-book,¹³ marked "transferred from trust account". This is the only evidence that the sum of \$125,000, which must have represented most of the profit made by Oceanic Investment, came from the Bank of Nova Scotia. The ledger card of the Bank of Nova Scotia Trust Company (Bahamas) Limited, covering the period October 31 to November 24, 1961,¹⁴ bears no trace of any corresponding withdrawal, and indeed the method of deposit in the Walton, Wagman & Co. trust account would indicate payment by cheque, or bank draft, rather than by transfer of funds.

The interest and importance of this transaction reside in the fact that it is an early example of the energy and lack of scruple displayed by C. P. Morgan in enriching himself personally, and his indispensable assistants W. L. Walton and Harry Wagman, at the expense of Commodore Sales Acceptance, and ultimately of Atlantic Acceptance, of both of which he was the president. The existence of a loan committee in the case of either company would have made the advance of nearly one and a half million dollars on no security for such an enterprise virtually impossible, even if such a committee were prepared to advance a sum of these propositions to Carl M. Solomon in trust for any dummy corporation without assets. It also constitutes the first example, as far as I am aware, of Morgan looking towards the Bahama Islands and using a company resident there, the profits of which were not taxable. The secrecy, and indeed obscurity, surrounding the disbursement of the profits of Oceanic Investment were carefully contrived to conceal the identity of the ultimate beneficiaries.

* * * *

Manipulation of the Market for Commodore Business Machines Shares: Distribution in Europe

By the end of July, 1963 Associated Canadian Holdings held just over 400,000 shares of the 816,000 issued by Commodore Business Machines, having acquired, since the middle of the month, 188,076 from Valley Farm, Dallas Holdings and from among those held by Harry Wagman in trust. Thereafter this company, with many of its shares of Commodore Business Machines pledged with brokers against loans, became heavily engaged in trading in them on the Canadian Stock Exchange, and, indeed, off the exchange outside Canada.

With the stock now safely listed on the Canadian Stock Exchange, and with public distribution, as they well knew, a travesty of what that term usually suggests, the promoters of Commodore Business Machines

¹²Exhibit 765.1.

¹³Exhibit 807.

¹⁴Exhibit 4454.

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were naturally anxious to dispose of some of their holdings to investors whose remoteness from the scene, and relative unsophistication, would provide some insurance against the stock, thus disposed of, coming back to break the tenuous market in Montreal. The first evidence of an attempt to place the shares of Commodore Business Machines off the market in Continental Europe is provided by a letter, taken from the files of Barrett, Goodfellow & Co., to Investitions und Handelsbank A.G. in Frankfurt am Main, Germany. This letter was first of all drafted in long-hand by A. A. Amos of the Barrett, Goodfellow firm, and then typed in the following terms:

"This is to authorize you to establish a Depositary Trust Account on our behalf for the deposit of 20,000 shares Commodore Business Machines (Canada) Limited which are being shipped to you today by Registered Air Mail.

You are further authorized to release the said stock against payment of a minimum of \$3.00 United States Funds per share. This amount is to be held in our account pending further instructions.

You are authorized to hold for the disposal of Mr. Harold Antin any proceeds in excess of \$3.00 US per share received from the sale of this stock. Mr. Antin will give you his instructions regarding the disposal of this excess.

Thanking you for your kind co-operation, we remain,

Yours very truly,

BARRETT, GOODFELLOW & COMPANY
A. A. Amos

P.S. It would be appreciated if you would forward to us any documents you may require to facilitate the establishment of our account."

A copy of a letter in similar terms was addressed to the Bank Maerklin at Hochstrasse 53 in Frankfurt, and one of the following letter, dated April 10, to Investitions:

"With reference to our letter of March 28th and the shares of Commodore Business Machines (Canada) Limited which you are holding in a Depositary Trust Account, subject to our instructions, this will be your authority to deliver 10,000 shares of Commodore to Bank Maerklin, Hoch Strasse 53, Frankfurt am Maine for our account against no payment. We are writing Bank Maerklin to instruct them to accept the shares from you."

These copies are attached to a memorandum, also dated April 10, headed "From Amos to C. P. Morgan", and proceeding, "Attached are copies of letters for your file. I am holding the originals subject to your approval. Please advise if satisfactory."¹ From these it would appear that

¹Exhibits 2123.1 and 2123.2.

20,000 shares of Commodore Business Machines common stock were split between the Investitions and Maerklin banks. Subsequently, by a telegram dated April 30, Investitions was given the following instructions:²

"You are hereby authorized to deliver 10,000 shares Commodore Business Machines (Canada) Limited against no payment to Bankhaus Marklin and Company, Hochstrasse 53, Frankfurt am Main for our account. Kindly advise Mr. Antin if you require additional stock and he will arrange delivery. Our letter follows.

Barrett, Goodfellow & Company"

The telegram was confirmed by a letter of the same tenor, dated May 2.³ Thereafter the correspondence, such as has been discovered, is directed only to the Maerklin Bank, no doubt on the instructions of Harold Antin, who was described by Tramiel as a public relations man doing work for Commodore Business Machines in New York, introduced to him by Morgan, and by Rennie Goodfellow as having been brought into the office of Barrett, Goodfellow & Co. on one occasion by Morgan. The Commission has no evidence as to how Harold Antin and Morgan became acquainted, but it is clear that this arrangement was made by Morgan, whoever made the initial introduction or the original suggestion as to the device employed.

Four separate parcels, each of 20,000 shares of Commodore Business Machines, were dispatched in this manner to Frankfurt on March 28, May 10, May 22 and June 24, according to the records of Barrett, Goodfellow & Co., and specifically a handwritten summary prepared by Amos entitled "Commodore certificates shipped to Germany."⁴ All of these 80,000 shares came from the account of Mildred L. Morgan. There is a further handwritten schedule,⁵ entitled "Commodore Business Machines 88-0005-4, Bankhaus Maerklin & Co., etc.", giving apparently complete information as to shares received and delivered, and bought and sold, containing a column in which the words "Mildred" and "Assoc" appear, indicating derivation from the accounts of Mildred L. Morgan or Associated Canadian Holdings, and from this document, in which the opening entry is April 10 and the closing entry December 10, 1963, it transpires that 80,000 shares were delivered, 53,300 sold and the balance of 26,700 shares shown as transferred to "88-006-2 Can. dollar account". The sale price is \$3 per share in United States funds, and remittance of funds arising from sales is shown as being made to Barrett, Goodfellow & Co. for a total of \$159,000 in that currency. On the second page the disposal of the 26,700 shares is dealt with, the price

²Exhibit 2123.3.

³Exhibit 2123.4.

⁴Exhibit 2123.5.

⁵Exhibit 2123.6.

per share being \$3 in Canadian funds, and shows an additional 50,000 shares as being delivered from "Assoc" on December 3 by Barrett, Goodfellow & Co. The last sale in Germany recorded on the schedule is for August 3, 1964, and the last remittance to Barrett, Goodfellow & Co. on October 5; all told, 130,000 were sold for \$390,000, if one disregards the foreign exchange factor. Until the transfer of May 27, 1963 funds received were credited to the account of Mildred L. Morgan in respect of 32,100 shares sold, and thereafter remittances find their way to Associated Canadian Holdings. Although some 98,000 shares were delivered to Germany out of the account of this company, a statement as at July 15, 1964 indicates that there was little reduction of the total shares held, because it was buying on the Canadian Stock Exchange. At June 30, 1964 Associated Canadian Holdings showed the original 215,600 shares of Commodore Business Machines which it had received from the Morgan, Tramiel and Kapp families on incorporation the year before, to which is attributed a value of \$3.50 per share for a total cost of \$754,600. An additional 174,424 shares were shown as having been acquired at prices ranging from \$3.50 to \$4.60 per share for a total of \$703,253.25. Its accumulation of some 400,000 shares by the end of July, 1963 was the result of taking over the brokerage accounts of Valley Farm and Enterprises and Dallas Holdings, already referred to, and by June 30, 1964, according to Wagman's file,⁶ it still held a round total of 390,000, after disposing of 90,000 odd in Germany. Evidently Barrett, Goodfellow & Co., through their office manager Ralph Carter, made a painstaking study of the ultimate destination of the shares sold through the Maerklin Bank and Harold Antin, and his findings appear in a hand-written schedule⁷ indicating that somewhat over 70,000 shares, identified by comparison with the certificate numbers of those sent to Germany, were re-sold on the Canadian Stock Exchange between May, 1963 and November, 1964. From July 1963 to July, 1964 the price of Commodore Business Machines shares on that exchange for board lots was always in excess of \$4, with a high point of about \$4.75, and Associated Canadian Holdings must inevitably have re-purchased a substantial number of these shares.

Unsworn testimony was given to the Commission on August 3, 1966 by Hans Guenter Hartenfeller, head of the securities section of Bankhaus Maerklin, at the bank's premises in Frankfurt, in response to questions put by Mr. Shepherd and in the presence of Mr. Derek Fraser, Vice-Consul for Canada and Mr. Silvester von Herrmann of Burns Bros. & Denton Limited, the Commission's adviser on financial matters in Germany. Hartenfeller said that the transaction was first broached to the bank in April, 1963 by Antin, who described himself as a public

⁶Exhibit 702.1.

⁷Exhibit 2123.7.

relations expert employed by Commodore Business Machines; that some of the shares were sold to the bank's regular clients but the bulk of them to Swiss banks; and that these banks were in fact clients of Antin, and sold them back on the Canadian Stock Exchange at prices ranging from \$5 to \$7 per share. The bank deducted its expenses and 3% of any excess realized on sales over and above the \$3 per share remitted to Barrett, Goodfellow & Co.; the balance was placed at Antin's disposal, and he shared in any profit made by the bank in disposing of the shares to its own customers. Hartenfeller concluded by saying that the bank had no direct dealings with Morgan, Tramiel or Kapp, receiving all instructions from Barrett, Goodfellow & Co. and Antin.⁸ Tramiel also denied having had any contact with the Maerklin Bank. Antin informed the United States Securities and Exchange Commission that he had worked as a public relations specialist for Commodore Business Machines from early 1963, dealing with Jack Tramiel and, in his absence, with his assistant, one Stanley Gould. A public company called Trail Europe, promoted by Antin, was a tenant of the Investitions Bank in Frankfurt; this had led him to approach this institution in the first place with the Commodore Business Machines proposal, and it had been rejected. He was more successful with the Maerklin Bank, and his version of the arrangement was that he had merely received a finder's fee, and the bank disposed of the shares to its own customers. He vehemently denied that he had received the proceeds of sales of stock, or had any control over their disposition.⁹ Such a denial is difficult to accept in the face of the explicit instructions to the Maerklin Bank by Barrett, Goodfellow & Co., and Hartenfeller's version is to be preferred. The Maerklin Bank, now defunct, was a smaller establishment than the Investitions Bank, and was housed in an unpretentious second floor office where it conducted a business similar to that of an investment dealer in this country. No doubt Antin's proposition looked more inviting to it than to the more substantial Investitions concern. The Commission has been unable to discover how Antin disposed of his own portion of the proceeds of this operation, or if he was under any obligation to share them with any other person. This attempt to stimulate interest in the stock of Commodore Business Machines in Germany was evidently not an unqualified success, but Morgan, as will be seen, was to return to the attack.

Incidence of Trading on Canadian Stock Exchange

An illustration of how slight was the interest of the general public in the trading of Commodore Business Machines shares on the Canadian

⁸Commissioner's notes on conversations in Germany.

⁹Commission file: Securities and Exchange Commission—letter of Peter J. Adolph; Division of Trading & Markets, October 28, 1965.

Stock Exchange, and how sedulously the market had to be cultivated, is provided by a study made by Mr. Wolfman of the trading undertaken by "insiders" between July, 1962 and June, 1965. This was prepared from various accounts in brokerage houses, principally, of course, Barrett, Goodfellow & Co. and Annett Partners, but including O'Brien & Williams, John Frame & Co., Jenkin, Evans & Co., Moss, Lawson & Co., Goulding, Rose & Turner, Bache & Co. and Barclay & Crawford.¹ The insiders consist of individuals and companies, operated at their direction, which are as follows: Dallas Holdings, Valley Farm and Enterprises Limited, Associated Canadian Holdings Limited, C. P. Morgan and Mildred Morgan together, C. P. Morgan No. 2 account, R. A. Goodfellow, Commodore Business Machines Inc., Evermac Office Equipment Company Limited, Hugo Oppenheim und Sohn Nachf. Berliner Privatbank, Hugo Oppenheimbank (Canada) Limited, Masco Construction Company Limited, Mavety Film Delivery Limited, N.G.K. Investments Limited, Tarmac Trust, Trans Commercial Acceptance Limited, Yarrum Investments Limited, Cimcony Limited, J. A. Medland, Jack Tramiel, F. B. Adair, Alan Christie, W. P. Gregory, Manfred and Estelle Kapp, C. G. King and J. C. Laidlaw. Some of these names have not been encountered so far in this report, but, since the examination of the trading covers the whole period from the listing of Commodore Business Machines shares to the collapse of Atlantic Acceptance, this is inevitable. Suffice it to say at this point that the Hugo Oppenheim Bank and its Canadian subsidiary company were, at all material times for the purpose of this trading, under the direction of Jack Tramiel, as was Tarmac Trust, a Bahamian nominee, and Trans Commercial Acceptance; Cimcony Limited was a Bahamian company controlled by George H. Weinrott, a close associate of C. P. Morgan; and F. B. Adair was president of Manhattan Sound Corporation and ~~Manhattan Sound West Corporation~~, in which Morgan and his wife had a substantial interest and which were dependent upon Atlantic loans, and was also a director with Weinrott of Analogue Controls Inc., the affairs of which will be examined in some detail. The other names of companies will be familiar as entirely under the control of C. P. Morgan, W. L. Walton, Harry Wagman, Jack Tramiel or Manfred Kapp. The result of this analysis is displayed below in a tabulation which shows, by months, the trading volume on the Canadian Stock Exchange; the trading volume on that exchange adjusted to value date so as to be consistent with the information derived from brokers' records; the insiders' trading volume, according to these records being the larger of the "sell" or "buy" side so as to avoid obvious duplication; finally the percentage of the total volume of trades involving the insiders listed above.

¹Exhibits 2175-81.

COMMODORE BUSINESS MACHINES (CANADA) LIMITED
TRADING IN COMMON SHARES

<i>Month</i>	<i>Trading Volume per Canadian Stock Exchange</i>	<i>Trading Volume per C.S.E. Adjusted to Value Date</i>	<i>"Insiders'" Trading Volume per Brokers' Accounts (The larger of the Sell or Buy Side)</i>	<i>% of Volume dealt in by "Insiders"</i>
July 1962	7,200	3,000	Not Known	
August	64,675	57,625	53,550	92.9
September	28,526	37,000	30,240	81.7
October	24,595	26,261	23,526	89.6
November	13,480	14,590	8,690	59.6
December	3,585	3,550	2,550	71.8
	<u>142,061</u>	<u>142,026</u>	<u>118,556</u>	<u>83.5</u>
January, 1963	10,965	6,685	4,100	61.3
February	14,550	9,565	5,665	59.2
March	20,850	29,050	29,000	99.8
April	15,543	16,343	13,618	83.3
May	57,625	57,025	51,360	90.1
June	12,775	13,275	6,575	49.5
July	40,223	39,233	23,900	60.9
August	6,433	7,023	4,010	57.1
September	3,853	4,353	2,749	63.2
October	15,880	14,880	7,550	50.7
November	17,405	9,695	5,400	55.7
December	7,335	16,315	7,860	48.2
	<u>223,437</u>	<u>223,442</u>	<u>161,787</u>	<u>72.4</u>
January, 1964	20,650	19,880	10,900	54.8
February	20,108	18,908	12,500	66.1
March	8,805	7,600	4,550	59.9
April	30,720	27,825	11,420	41.0
May	20,850	25,550	19,400	76.8
June	4,555	5,755	5,600	97.3
July	11,135	9,535	9,900*	100.0
August	6,455	7,955	6,600	83.0
September	7,065	6,300	3,900	61.9
October	79,961	69,166	33,855	48.9
November	118,641	120,031	43,801	36.5
December	129,993	130,833	63,912	48.9
	<u>458,938</u>	<u>449,338</u>	<u>226,338</u>	<u>50.4</u>
January, 1965	94,478	89,400	37,770	42.2
February	73,679	76,685	30,263	39.5
March	81,327	84,477	38,659	45.8
April	35,834	41,900	20,899	49.9
May	55,627	56,898	30,611	53.8
June 1-15th ..	31,919	141,382	59,053	41.8
June 15-30th ..	119,188			
	<u>492,052</u>	<u>490,742</u>	<u>217,255</u>	<u>44.3</u>
Total Trading— Inception to June 30, 1965	<u>1,316,488</u>	<u>1,305,548</u>	<u>723,936</u>	<u>55.5</u>

*Unexplained variance.

It will be observed that in the first six months after listing the insiders are responsible for 83½ % of the trading on the Canadian Stock Exchange; in 1963, 72.4%, in 1964, 50.4% and to June 30, 1965, 44.3%, the average percentage over the whole period being 55.5%.

Particularly in the early period of trading, when these persons and corporations dominated the market, it is not surprising that some apparent "cross-trades" occurred. Those detected by Mr. Wolfman are listed and in evidence,² and examples which seem to be disingenuous are the following:

<u>Date</u>	<u>Buyer</u>	<u>Seller</u>	<u>No. of Shares</u>
Aug. 29, 1962	Mildred Morgan	Valley Farm	25,000
Sept. 24, 1962	Mavety Film	Valley Farm	2,000
Oct. 12, 1962	Valley Farm	C. P. Morgan	10,000
March 27, 1963	Mildred Morgan	R. A. Goodfellow	10,000
April 26, 1963	Evermac Office Equip.	Dallas Holdings	9,200
May 27, 1963	Cimcony Limited	Dallas Holdings	17,000

These trades were on the market, and were all effected by Barrett, Goodfellow & Co. on both sides of the transaction, except that of April 26, 1963 between Evermac Office Equipment and Dallas Holdings which was handled by John Frame & Co. Trading began on July 23, 1962 at a price of \$2.70 per share, but by the end of August there had been a rise from \$1.75 to a high of \$4.25 from the exiguous volume of 64,000 shares traded, and thereafter until the end of the year the price fluctuated between \$4 and \$4.50. The active trader during this period was Valley Farm and Enterprises which bought 46,000 and sold 82,385 shares; the C. P. Morgan and Mildred Morgan accounts bought a total of 25,000 shares during 1962 and sold 10,550; Dallas Holdings bought 17,000 and sold 730; J. A. Medland bought 10,000 off the market and sold 15,550 on it. At the end of the year the positions of Evermac Office Equipment, Mavety Film Delivery, Dallas Holdings, Valley Farm and Morgan are substantially flat, these accounts having dealt in something like 90,000 shares.

During the year 1963 the insider group bought 153,360 shares and sold 118,120, the prices varying between \$4 and \$4.75 per share. In the first few months the bulk of the trading was carried on by the R. A. Goodfellow special account in Barrett, Goodfellow & Co., but in March its long position of 10,000 shares was transferred to that of Mildred Morgan. In the second quarter, Dallas Holdings became the principal trader, buying 43,000 shares and selling 35,000, but after June, 1963 discontinued trading entirely until after the Atlantic default. On incorporation in July, Associated Canadian Holdings took the lead, and at the

²Exhibit 2183.

end of the year had bought 30,228 and sold 14,930 shares on the Canadian Stock Exchange. In July the R. A. Goodfellow special account again became active, buying 12,600 shares and selling 2,900, and on July 25 liquidated its long position by transferring 10,000 shares to C. P. Morgan for \$44,125.³ This transfer was off the exchange, and marks the second occasion on which the long position of this account was transferred to one of Morgan's. In 1964 Associated Canadian Holdings preserved its substantial interest in the trading for the first three-quarters, during which it bought 60,350 and sold only 7,930 shares. C. P. Morgan began to trade heavily, and his No. 2 account was opened in October 1964, through which Commodore Business Machines shares were bought, but not sold. Both Medland and King were substantial sellers in 1964. But in October of this year there is a change. Associated Canadian Holdings and Trans Commercial Acceptance ceased to trade, and the Morgan accounts from October to December sold 115,300 shares, while buying only 4,500. These sales do not include 20,000 shares sold off the market to British Mortgage & Trust from the C. P. Morgan No. 2 account, in response to a display of interest by Wilfrid Gregory who was unaware that he was taking these shares off Morgan's hands. During this period of Morgan's sales the price of Commodore Business Machines shares rose steadily, being \$5.50 per share at the end of October, \$6.75 at the end of November, \$7.75 at the end of December, in January 1965, \$8.50, in February, \$9, on March 31, \$10.25 and in April, \$10.50. In May of 1965 the shares declined in price to \$7.50, and on June 15 the closing price was \$7.125. On the following day, sucked downward by the Atlantic crash, it reached \$4.25, and by the end of the month \$2.30. During the last quarter of 1964 Morgan, on purchases and sales in and out of his accounts on the exchange, was short 110,000 shares, and was the only large trader.

Associated Canadian Holdings' Agreement with its Shareholders

This shortage of shares was offset by those available to the shareholders of Associated Canadian Holdings. Its financial statement of June 30, 1964 includes a note to the balance sheet referring to an option agreement of July 1, 1963 for the purchase of 215,600 shares at \$3.50 per share, expiring June 30, 1965, and the books of the company record the sale of that amount pursuant to option, off the market in December 1964. The number of shares, of course, is identical with those acquired by Associated Canadian Holdings from the Morgan, Tramiel and Kapp families at the beginning of its career, and in the files of Solomon & Singer dealing with the company¹ there is an unsigned agreement, dated July 1, 1963, between Associated Canadian Holdings, on the one hand,

³Exhibit 2184.

¹Exhibit 823.

and Manfred Kapp, Estelle Kapp, Jack Tramiel, Helen Tramiel, Benjamin Silberman, Regina Silberman, C. Powell Morgan, Mildred Morgan and Harry Wagman on the other.² All the copies of this agreement that have been found conclude at the bottom of the last page, "In witness whereof the parties hereto have executed this agreement as of the day and year first above written." The final page, which would carry the signatures, is missing in each case, but the gist of the agreement is that the shareholders have not only the right, but an obligation to purchase at \$3.50 shares of Commodore Business Machines originally exchanged for those of Associated Canadian Holdings. In its books Associated Canadian Holdings treated the transaction of December 1964 as if all the shares of Commodore Business Machines had been transferred to the shareholders, creating a debt by them to the former which was paid in part.³ During December the company recorded sales under the option, at \$3.50 per share, of 28,500 to Harry Wagman, 36,577 to C. P. Morgan and 15,000 shares to Mildred Morgan, for which it was paid, and payments in respect of these shares were all that was credited against the company's treatment of the entire 215,600 as being sold at that time.

Tramiel denied knowing anything about this agreement until after the collapse of Atlantic, and this is consistent with the evidence that he gave on his examination for discovery in the bankruptcy of Associated Canadian Holdings on November 8, 1965.⁴ He swore emphatically that he had never signed such an agreement, and said with some point that, had he known about it, he would have definitely paid Associated Canadian Holdings \$3.50 per share and sold them for \$10.50.⁵ No documents have been found to indicate that any of these shares were transferred to Tramiel, Kapp or any members of their families. Both Tramiel and Kapp maintained that they had never discussed with Morgan the making of a market for Commodore Business Machines, or his plans to create interest in the shares in Germany. Kapp testified that he had noticed the European activity in the stock from perusing the transfer sheets supplied by the Eastern Trust Company. He was prepared to admit that some discussion must have occurred arising from the remarkable increase in the value of the shares in 1964. He recalled particularly an incident which occurred in 1963, when Morgan had asked him to issue a cheque on behalf of Associated Canadian Holdings in the amount of 4,971.77 to pay an invoice of Provincial Envelopes Limited, addressed to the company,⁶ for some 120,000 envelopes which were mailed, with some material inserted in them, under circumstances and to addressees of which he knew nothing. Morgan had told him that it was not really an affair of Associated Canadian Holdings, and that the money would

²Exhibit 823.4.

³Exhibit 2165.

⁴Exhibit 4162.

⁵Evidence Volume 86.

⁶Exhibit 3645.

be repaid. He had subsequently turned the handling of the bank account of Associated Canadian Holdings over to Harry Wagman, and had lost interest in the matter, because, as he said, \$5,000 was not much money for a man like Morgan to handle, and Morgan had never at any time taken him into his confidence. Further inquiries by the Commission indicate that the enclosures were copies of, or extracts from the "News Observer", a tout sheet published by David Rush.

However, there is evidence sufficient to convince me that Tramiel and Kapp were by no means as much in the dark about the employment of the shares of Commodore Business Machines held by Associated Canadian Holdings as they would now like to assert. The letter from Barrett, Goodfellow & Co. of July 25, referring to the transfer of 10,000 shares in Morgan's account for \$44,125⁷ mentioned above, was endorsed in Morgan's handwriting, "H.W. and M.K.: Please send cheque to B.G. and pick up stock. C.P.M.". There is also in evidence a carbon copy of a letter to Barrett, Goodfellow & Co., addressed to the attention of R. A. Goodfellow and dated November 20, 1964, reading as follows:

"This is your authority to transfer 40,000 shares of Commodore Business Machines (Canada) Limited to the account of C. Powell Morgan.

Yours truly,

Associated Canadian Holdings Limited,

Per: H. Wagman—director".

Endorsed thereon, in what appears to be Wagman's handwriting, is a note dated December 7, 1964 which reads: "This is your authority to write same letter as above to B.G. & Co. for another 40,000 shares". It is initialled "J.T." and "M.K.", without doubt in the handwriting of Jack Tramiel and Manfred Kapp. This letter was entered as an exhibit in the examinations for discovery of Tramiel, Kapp, Wagman and Morgan in the bankruptcy of Associated Canadian Holdings, being obviously of great interest to the trustee in view of the debt, recorded by the company, arising from the apparent failure of the Tramiels, Kapps and Silbermans to pay for the shares of Commodore Business Machines under the terms of the option agreement. Tramiel said that he was prepared to agree that these were his initials, but could not recall affixing them to the minute on this letter, or anything about the transaction.⁸ Morgan identified the initials as being Tramiel's, and said that the resulting transfer of 80,000 shares was related to those of Harry Wagman and Mildred Morgan, and that he was handling them with the consent of the owners. Kapp said that the initials "M.K." appeared to be his and that, since he was not a handwriting expert, he was not prepared to say that he had signed them, and did not remember doing so.⁹ He agreed that there were

⁷Exhibit 2184.

⁸Exhibit 4162.

⁹Exhibit 4158.

COMMODORE BUSINESS MACHINES

transfers back and forth between Morgan and Associated Canadian Holdings of the shares of Commodore Business Machines, but denied authorizing them and said that, since he was not "operating" the company, he had made no inquiry. When he was asked to sign something by Morgan or Wagman he simply did so. Harry Wagman in his examination¹⁰ could not recall the transaction, but agreed that the evidence indicated that the letter had been written, and said that the facilities of Morgan's trading accounts were to be used by the shareholders exercising the option, then in contemplation, to obtain money to pay for the shares acquired from Associated Canadian Holdings. He gave his recollection of the terms of the option agreement substantially in accordance with the copy entered in evidence, and left little doubt that it had in fact been executed. As to the exercise of the option by the parties to the agreement other than himself and the Morgans, he felt that the books of Associated Canadian Holdings correctly reflected the intention to exercise it, but that the company could not deliver the required shares because of their being pledged against loans from various quarters.

The reluctance of Tramiel and Kapp to acquiesce in any interpretation of the facts which would attribute knowledge of these transfers to them, when the trustee of the estate of Associated Canadian Holdings was relying on the mutilated option agreement and the records of the company to recover from them the proceeds of their Commodore Business Machines shares at a price of \$3.50, then selling at slightly over a dollar per share, is understandable if not excusable. The disappearance of the last page of the option agreement, which must have contained the signatures of the parties, was only too characteristic of the atmosphere prevailing at the time, but is more difficult to explain. No draftsman, in the normal course, would construct an agreement in which the signatures of the parties alone were isolated on a separate page, unless perhaps by design. It is scarcely conceivable that any lawyer, however lacking in appreciation of the ethical standards required by his profession, would have thought the device effective. If the final pages of existing copies of the agreement were deliberately removed and destroyed, such action, one would think, would be that of a layman, and an uninstructed layman at that; since the only persons who could benefit from the ineffectiveness of the written agreement in 1965 were the Tramiels, Kapps and Silbermans it is more than likely that Tramiel, Kapp or their agents were responsible for this crude deformity of the records. In any event it seems clear that slightly over 80,000 shares belonging to Morgan, his wife and Harry Wagman were sold in December 1964 by Associated Canadian Holdings at a price of \$3.50 per share under the terms of the option agreement, and were transferred to the brokerage account of C. P. Morgan with the knowledge and consent of Tramiel and Kapp.

¹⁰Exhibit 4167.

In February 1965 the books of Associated Canadian Holdings record payment by Barrett, Goodfellow & Co. for 52,000 additional shares of Commodore Business Machines, for the account of C. P. Morgan, by cheque in the amount of \$182,000. Morgan's short position in the shares of Commodore Business Machines was thus more than sufficiently restored.

Frank Kaftel and I.F.A.S.

Beginning in October 1964, and coincidental with the sharp rise in price above the \$4 to \$4.50 level, and trading which, over a six months period, would be substantially greater than anything which had gone before, the company's stock was singled out for attention and support in the pages of a bulletin published by the International Financial Advisory Service in Luxembourg. The situation of this picturesque Grand Duchy, on the borders of France, Germany, and Belgium, has for long secured it a strategic and economic importance far beyond what its geographical extent and population would, in the normal course, be expected to command. Moreover, the authorities in Luxembourg have appreciated the fact that the independence of a small country must depend to a large extent upon its usefulness as such, the example of Switzerland being always in mind. A liberal attitude towards the regulation of commercial activity, particularly as it might affect the citizens of other countries, has in the years since the Second World War made Luxembourg, and to a lesser extent Liechtenstein, the favourite haunts of business practitioners who have little to lose, and everything to gain, by rustivating in these pleasant parts of the world, where fewer questions are asked about their past records and future plans than by the authorities in their countries of origin. Such a one was Frank Kaftel, an expatriate from the United States, the land of his birth, and from Canada, the land of his adoption, who since 1955 had been living in Paris, and had conducted from Luxembourg the preparation and the distribution in Continental countries of the bulletins of the International Financial Advisory Service (I.F.A.S.). The appearance of Kaftel on the scene, and his close association with C. P. Morgan during a critical period in his affairs and that of Atlantic Acceptance, casts upon it that lurid and wavering half-light generally associated with a coming storm.

Details of the career of Frank Kaftel have been obtained from a number of sources, but principally from the evidence of Mr. N. W. H. Cox, chief investigator for the Ontario Securities Commission, who testified on May 26, 1961,¹ and from Kaftel himself, who was interviewed by the Commission in Paris pursuant to an arrangement suggested by him in March 1967, at which time a summary of his unsworn testimony was reduced to writing by Mr. Shepherd, and signed by the witness in my

¹Evidence Volume 38.

presence.² He was born in New York City in 1902 and moved to Cleveland, Ohio as a child. His father's surname was Kulunderino, otherwise spelled Kulunderine, a name which was changed to Kaftel in Cleveland. In 1919 he returned to New York where he was employed as an entertainer using the stage name of Jack Castle. From 1924 until 1935 he was engaged in the real estate and securities business in New York, and in the latter year was indicted for being in possession of stolen bonds obtained in a bank robbery, the charge being eventually dismissed. In 1937 he is to be found in London, selling, as it is said, "oil royalties", but, after a brief sojourn in Paris, he was refused permission to re-enter the United Kingdom because of the questionable activities of the company by which he was employed, and which was suspected of "share-pushing". He made another attempt at entry in 1938, but was arrested and charged with being an alien landed in England without permission. To this he pleaded guilty and was sentenced to one month's imprisonment, and, upon his release, was deported to the United States. During his stay in England he used the names "J. Simon", "Frank Carson", "Frank Newman" and "James Sibley", and was associated with a certain Jacob Pearlzweig, better known under the alias of Robert William Liversidge, the appellant in the well-known case of *Liversidge v. Anderson*,³ when the House of Lords, led by Viscount Simon L.C., decided that the Home Secretary, Sir John Anderson, did not have to disclose his reasons for detaining Liversidge under the war-time Regulation in 18B.

When Kaftel arrived in the United States he continued in the securities business, registered as a broker in Baltimore under the name of Frank Kaftel & Co. In war-time, specifically in 1942, he left the United States and came to Canada, being immediately accorded registration as a securities salesman, a status which lasted until January 1944 when he was suspended for failing to disclose a personal financial interest in a firm registered as a broker-dealer. Subsequently it transpired that disclosure had in fact been made, unknown to the Ontario Securities Commission which restored his registration in September 1944. Thereafter Kaftel, also using the name "Deverrier", followed his fortune as a stock salesman until August 1945, when the registration lapsed with the termination of his employment by Bowman, Stuart & Co. A more ambitious application was made on November 20, 1946, when Kaftel sought registration as a general broker under the name of Frank Kaftel & Co. The application was refused on November 20 and again on December 17, and abandoned on January 30, 1947. Then, at the end of the year, he applied for registration as a general broker under the name of Standard Securities, and this application was refused at a plenary session of the Ontario Securities Commission.

²Appendix G.

³(1942) A.C. 206.

None the less, persistence was rewarded when Kaftel applied to resume his old status as a securities salesman, and registration as such was granted on June 2, 1948; on December 6 in the same year his application to be granted registration as a broker-dealer under the name of McGill Securities (Ontario) Limited was also successful. On this occasion he gave an undertaking to the Securities Commission in writing that he would not solicit sales in the United States, unless the particular issue of securities which he sought to dispose of was qualified with the United States Securities and Exchange Commission. Just over six months later, on August 3, 1949, the chairman of the Securities Commission suspended the registration for the following reasons:⁴

"In the course of a current investigation it was disclosed that a printing company extended credit in excess of \$50,000.00 to a broker-dealer, thus enabling this dealer to flood the mails outside of Ontario with promotional literature. Mr. Frank Kaftel owns ninety percent of the capital stock of the printing company in question. Kaftel also controls McGill Securities (Ontario) Limited, registered with the Commission as a broker-dealer. The business manager of the printing company is also a director of the McGill Securities Company.

This is an obviously unhealthy situation that does not require further discussion at this stage, as Mr. Kaftel will be afforded ample opportunity to make representations if he applies to have the suspension of the registration of McGill Securities (Ontario) Limited lifted.

I might however point out that Mr. Kaftel has indirectly been instrumental in flooding the United States mails with literature, despite his written undertaking not to make any offerings in the United States unless the issue was duly qualified.

The registration of McGill Securities (Ontario) Limited will be suspended until further notice."

Kaftel was thus shown to be a pioneer in the post-bellum technique of using the mails to circumvent in the United States the regulations published and enforced by the authorities there, a technique which, together with that of using the long-distance telephone in a similar fashion, has been employed to bilk credulous members of the public in the United States, causing great and continuing concern to the Securities and Exchange Commission in Washington, and bad odour for Canadian business in the American press. The Ontario Securities Commission, early in this development, took measures to defeat this type of activity, and Kaftel like so many others sought greener pastures in Western Canada, particularly in the Province of Alberta, where he resided after an investigation of his promotional activities in the case of a company known as New Continental Oils Limited in 1952. At this time he failed to respond to a subpoena issued by a committee of the Legislative Assembly of Ontario investigating crime, and it was from Alberta that he promoted

⁴Ontario Securities Commission Bulletin, August 1949.

Pontiac Petroleum Limited, a stock manipulation which was the subject of an investigation by the Ontario Securities Commission and resulted in the cancellation of the registration of the Toronto brokerage firm of Rittenhouse & Co.

At some time during Kaftel's stay in Canada—according to his own account in 1949—he became a Canadian citizen and, as a badge of his new allegiance, created a large indebtedness to the State in respect of unpaid income tax. This was his own stated reason for not appearing before this Commission in Toronto, and may have, among other things, induced him to leave the country and live in France. His venture in Luxembourg, the International Financial Advisory Service, was incorporated there on February 22, 1951, but did not in 1964 record his name amongst those of its officers and directors; but both his own statement and the records of the Ontario Securities Commission, compiled from many sources, agree that at this time he was in full control of its affairs. The bulletins were issued in the French language, although the name of the enterprise was English, and generally the tone of their contents indicates superior wisdom derived from past experience of the American and Canadian stockmarkets which, for the price of the annual subscription, slightly over \$60 in United States funds, its author was willing to impart to his subscribers. Up until the time now under examination I.F.A.S. had touted the shares of John Northway & Sons Limited (a promotion of David Rush), Sharpe Instruments of Canada Limited, National Controls (Canada) Limited, All-Canada Bowling Limited, Private Brand Drugs Limited, Delta Electronics Limited, Western Helium Limited and Lucayan Beach Hotel Company Limited. It does not, of course, follow that, because the I.F.A.S. bulletin recommended the purchase of shares of these companies, they were connected with Kaftel. There are, however, connections, apart from that with David Rush who will be mentioned hereafter. Kaftel told the Commission that he first heard of C. P. Morgan through Earl Glick of Delta Electronics, which had borrowed Atlantic money, and Allen Manus, of Lucayan Beach Hotel, claimed to have suggested to Morgan that he should enlist Kaftel's aid in stimulating European interest in the shares of Commodore Business Machines.⁵

There seems to be little doubt that Manus was the first link between Morgan and Kaftel. Before going to New York with his brother Cecil in 1948 Allen Manus had been a salesman with two brokerage firms in Toronto from his twentieth year in 1944, and all his background indicates that he was, and is knowledgeable about the half-world of the securities business and its clandestine operations. According to Kaftel, he had known Manus for some time prior to June or July 1964 when the latter came to see him at the Hotel Majestic in Cannes in an attempt to find a

⁵Exhibit 4068.

buyer for some shares of Lucayan Beach Hotel Company Limited. Kaftel did not recall the number of shares involved or the price per share, but said that he did dispose of them as required, and was to receive \$50,000 as a fee. Payment was made in the form of a cheque for \$20,000 delivered to Jules Schoen, a long-time adherent of and "runner" for Kaftel, presumably in the Bahamas. The cheque was not met when presented at the bank, and Kaftel told Schoen to get him cash, dealing in which was his invariable habit. Subsequently, Kaftel said, he got \$20,000 in cash but not the balance promised. According to Rennie Goodfellow, Morgan stepped into the breach on this occasion and provided Manus with the money for this payment, although, as Goodfellow recalled, the amount was \$30,000, at least as provided by Morgan.⁶ In particular Kaftel denied receiving a cheque in the amount of \$45,000, dated June 26, 1964, made payable to "F. Kulunderino", drawn on the Bank of Nova Scotia at Toronto by Daylite of Grand Bahama Limited,⁷ and denied that the endorsement thereon was in his handwriting. This cheque was deposited to the credit of Galco Trust Reg., and other similar cheques will be referred to. At the time of the meeting in Cannes Manus had not, as Kaftel recalled, mentioned the name of C. P. Morgan, and it was not until October 1964 that Schoen had written to him to say that he was bringing Morgan over to Paris to discuss a deal for the sale of shares in Europe. The meeting had occurred in the Hotel Georges V, Kaftel, Schoen, Morgan, Goodfellow and Tramiel all being present.

Morgan's Visits to Kaftel in Paris

This first meeting between Morgan and Kaftel constituted the second and more determined attempt to create a market for Commodore Business Machines shares, sustained by European investors. Morgan's expenses were paid for by Barrett, Goodfellow & Co., a circumstance which Goodfellow described as a public relations gesture, because of his firm's association with Morgan, and the revenue which it was getting and expected to get from his trading. One of the peculiarities of Goodfellow's evidence in connection with this meeting and with later expeditions to the same address, was that nothing about trading or the disposition of shares or profits was ever discussed in his presence. Only generalities, the prospects of the companies and so forth were dealt with by Morgan and Kaftel, after which Goodfellow went for a walk as a sightseer in Paris, or back to his hotel to sleep, leaving the principal actors to confer alone. On four separate occasions Goodfellow accompanied Morgan to Paris and his firm paid their expenses, but at no time, according to his sworn evidence, was he ever told the purpose of the visits, or the details of any arrangement made between Morgan and

⁶Evidence Volume 46.

⁷Exhibit 3841.1.

Kaftel. During the course of eight long trans-Atlantic flights, said Goodfellow, Morgan had been largely silent and often asleep. It is true that Morgan did not give his confidence easily, but it is impossible to believe that Goodfellow, with his expert knowledge of stock market operations, should have played no part in the arrangements with Kaftel, and the patent untruthfulness of his evidence on this aspect of his relationship with Morgan must vitiate all of it, except where there is independent corroboration of what he said. Kaftel's recollection was that he played an active part in the conversations, particularly those dealing with shares of Analogue Controls. Goodfellow said that, although he had not met Kaftel before, he was familiar with his record, particularly in connection with the Pontiac Petroleums promotion; there can be little doubt that he realized that he was playing a dangerous game for a member of the Toronto Stock Exchange, and in his evidence before the Commission was obstinately determined to deny any knowledge of what had been afoot. I conclude, therefore, that Goodfellow was present on October 31, 1964 for the same reason that he was present at three subsequent meetings: his knowledge and advice were vital to the transaction. Information as to the manufacturing and sales prospects of Commodore Business Machines was supplied at this meeting by Jack Tramiel, who was summoned by Morgan from Berlin where he had been visiting the show-piece of the Commodore Business Machines collection, the Willy Feiler plant, purchased by the Canadian company for \$1,000,000 some sixteen months before. In the course of his evidence Goodfellow described Jules Schoen as a "courier" and, when pressed by counsel and myself as to why he should use this term, he was unable to explain this revelation of his knowledge of the mechanics of Kaftel's business. Kaftel and Goodfellow are, however, at one about the preliminaries. Morgan showed Kaftel the list of the lenders of money to Atlantic Acceptance, and the latter was impressed with what Goodfellow described as Morgan's "credentials".

Kaftel said that all three of Morgan, Tramiel and Goodfellow related their experience the year before with the Maerklin Bank in Frankfurt and Harold Antin, and how they had managed to sell about 180,000 shares in Europe, although most of them had been repurchased on the Canadian Stock Exchange. Still a substantial number of shares were in European hands. The only evidence as to the terms of the agreement which must have been made on this occasion was supplied by Kaftel himself; Morgan in his evidence referred to two meetings, and not more, only in connection with the shares of Analogue Controls. According to Kaftel, he was to be paid \$25,000 per week for recommending the purchase of Commodore Business Machines shares in I.F.A.S. bulletins, and he was to cause an average of 35,000 shares per week to be sold. Shortly after this arrangement was completed he went to Berlin and to Offenburg to inspect the Willy Feiler plants, and, like every visitor to

these establishments, he was most favourably impressed, particularly with the adding machine and the prototype of the electric portable typewriter. He mentioned being shown a machine sold to International Business Machines, which produced a profit at a price of \$3,000 per unit, selling in the United States for \$30,000, and seeing orders for 200,000 of the electric typewriters. He formed the impression that Commodore Business Machines stock, on the basis of ownership of this profitable and well-run subsidiary, was worth \$20 per share.¹

The Nature of Kaftel's Services

It is now time to notice the nature of Kaftel's services, for which he admitted getting at least six payments of \$25,000, by looking at the I.F.A.S. bulletins to the extent that they refer to Commodore Business Machines and its securities. Both the original documents¹ and their English versions, made by the translation section of the Department of the Provincial Secretary & Citizenship of Ontario² were put in evidence by Mr. Wolfman. The first reference to Commodore Business Machines, which is not named, appeared in the bulletin dated October 15, 1964 and indicates that Kaftel did not wait until the meeting of October 31 to lay the foundation of his subsequent services, and had already issued the following tantalizing invitation:

"We have information regarding a company admitted to the Official Quotation of a Stock Exchange, having plants in EUROPE, in the U.S.A. in CANADA, whose products are sold in 55 countries COVERING THE WHOLE OF EUROPE.

Here is a chance for you to obtain information, GRATIS, on this company whose future is assured. It has quintupled its turnover since 1959.

Here are some reasons why you should get this information:

- 1) It is an international company.
- 2) ITS EUROPEAN BRANCH IS IN FULL EVOLUTION.
- 3) It is a company with diversified activities.
- 4) It has excellent management.
- 5) IT IS ADMITTED TO THE OFFICIAL QUOTATION OF A STOCK EXCHANGE AND MAY BE BOUGHT OR SOLD AT EACH SESSION.
- 6) Its present rate is within the range of everybody.

CABLE OR TELEPHONE US FOR THIS INFORMATION IMMEDIATELY, OR COMPLETE THE ATTACHED FORM AND MAIL IT TO US BY RETURN."

¹Appendix G.

²Exhibit 2187.

³Exhibit 2188.

COMMODORE BUSINESS MACHINES

The attached form, expressing interest in receiving the promised information, was addressed to I.F.A.S.—52 route d'Esch, Luxembourg and it appears that those subscribers who completed and returned it received advance information on what was conveyed to subscribers as a whole in the bulletin of December 1, 1964:

"SELECTION IS THE OPERATIVE WORD

FOR TO-DAY'S MARKETS . . . HERE IS ONE . . .

DO YOU KNOW THE HISTORY OF INTERNATIONAL BUSINESS MACHINES, BETTER KNOWN AS I.B.M.?

It is terrific, started very small, was traded as low as \$3, reached a maximum of \$607 and has been split 8 times since its foundation, and is admitted to the Quotation of the N.Y.S.E. Can you imagine how much money you would have if you had bought 1000 shares at \$3.-? I.B.M. is history, since this international company is known all over the world.

* * * *

NOW, we present to you a young world company, COMMODORE BUSINESS MACHINES, C.B.M., whose expansion has been enormous since its founding a few years ago.

Since its creation, this company has extended the market for some of its products which are sensational. It also manufactures components for some of the giants of this industry. We give below its progress:

- 1) Although COMMODORE was formed in 1958, one of its subsidiaries has been in existence for more than 50 years.
- 2) Since its creation, the following companies have formed a part of this international company:

In GERMANY: WILLY FEILER ZAEHL-UND RECHENWERKE GmbH, with 2 plants in West Berlin and Offenburg. The new plant in Offenburg is equipped for large-scale production. 75,000 portable electric typewriters are assured annually.

In IRELAND: Commodore Industries Ltd., in Shannon.

In the U.S.A.: Commodore Drycopy, Phil., Pa. . . .

Commodore Business Machines Inc., N.Y.

In CANADA: Associated Tool & Mfg. Co. Ltd., . . . Shelburne Tool Co. Ltd. . . . Belpree Mfg. Ltd. . . . Commodore Drycopy Ltd. . . . Humber Typewriters & Business Equipment Ltd.

- 3) This company has quintupled its turnover since 1959, and will increase its production annually. Its products are sold in 55 countries.
- 4) At present, it is placing on the market a revolutionary type of portable electric typewriter. Management states: "Orders for 250,000 machines have been booked. First deliveries expected at the end of May.

- 5) A stock which can be bought and sold at any moment, whatever the market tendency, BECAUSE ITS EXCHANGES ARE SUS-
TAINED.
- 6) Its management and directors are esteemed and dynamic.
- 7) IN YOUR PORTFOLIO, THIS STOCK COULD PROVE TO BE
IN THE FUTURE ONE OF YOUR BEST INVESTMENTS.
- 8) A FREE ALLOTMENT HAS JUST BEEN DECLARED, GIVING
TO ALL SHAREHOLDERS REGISTERED PRIOR TO THE
END OF 1964 ONE FREE SHARE FOR EVERY 20 HELD.
THIS REPRESENTS A 5% BONUS FREE OF TAX, PAYABLE
ON JANUARY 31st 1965.

This speculative Industrial may follow the course of the great world office-equipment companies. Since its shares are at present within your reach, IT IS IN YOUR INTEREST TO INCLUDE SOME IN YOUR PORTFOLIO.

BUY TO-DAY ON THE CANADIAN STOCK EXCHANGE,
MONTREAL, CANADA.

COMMODORE BUSINESS MACHINES.

Price: about 6½ Canadian dollars.

PLACE YOUR ORDERS IMMEDIATELY WITH YOUR BANK
OR YOUR BROKER.

IN OUR OPINION THESE SHARES WILL BE TRADED AT \$20 EACH BY THE END OF 1965. THIS WILL BE JUSTIFIED BY THE PROFITS MADE BY THE COMPANY."

The next weekly bulletin, that of December 8, contained the following:

"Our last week's edition was devoted to a company called:

COMMODORE BUSINESS MACHINES.

We have before us letters in which certain "brokers" and banks have given INCOMPLETE INFORMATION to our subscribers. We believe that this was NOT INTENTIONAL and we do not hold them responsible for it, because they get their information SECOND HAND. They are therefore going to be embarrassed by the exact picture which will appear.

THE THING TO KNOW NOW IS WHY GET INFORMATION SECOND HAND? If you are a shareholder, REGISTER your shares to YOUR NAME AND ADDRESS and you will receive reports on the progress of the company directly from its headquarters. We believe that VERY INTERESTING NEWS is going to appear.

COMMODORE BUSINESS MACHINES

WE HAVE BEFORE US A REPORT DATED NOVEMBER 24th WHICH WE CONSIDER EXCEPTIONAL NEWS. Write to us to get it. We will send a photostat of the original with a translation, and with our comments separately.

Did you buy COMMODORE last week? . . .

If not, DO IT TO-DAY . . .

BUY at your bank or broker . . .

Quoted on the Montreal Stock Exchange.³

Price: \$ Can. 6¾ approx."

On December 15, in the course of a year-end salutation, the following appeared:

"During the past two weeks we have spoken of

COMMODORE BUSINESS MACHINES (C.B.M.).

Once more we wish to bring to your attention this company which, in our opinion has GREAT GROWTH AND PROFIT POSSIBILITIES.

We understand that a new report of the STATE OF THE TREASURY will appear during February, to give the shareholders an EXACT PICTURE of the company's ASSETS, since MILLIONS OF DOLLARS of material and real estate figure for ZERO in the books. A new evaluation would bring out the truth.

We are informed that the company has perfected a NEW CALCULATING MACHINE which will retail at between \$2000 and \$3000. THIS WILL ALLOW SMALL COMPANIES TO HAVE ONE. This inexpensive calculating machine will sell at a price lower than that of other current calculating machines. This, in addition to the new and revolutionary PORTABLE ELECTRIC TYPEWRITER and other products under study, means that COMMODORE should be in your PORTFOLIO.

One knows that "Something new draws the crowds". As regards the COMPETITION (some bankers have pointed out that certain large companies of this kind could not make ends meet), we believe there is room for everybody. It is COMPETITION that stimulates the world.

After all, a GOOD SPECULATION IS WORTH A TRIAL, and COMMODORE is a good SPECULATION. It knows how to PRODUCE GOOD PRODUCTS AT LOW PRICES.

Remember that LIFE IS A GAME. Let us not allow to-day's opportunity to slip by . . . Life is a good speculation.

We have been inundated with requests for the report of November 24th on COMMODORE. We must ask you to forgive us for failing to forward it before our reopening in January.

³Here and on pp. 383-4 the original version reads "BOURSE CANADIENNE, Montreal". The error is that of the translator—not one that Kafel would be likely to make.

THE BEST NEW YEAR'S GIFT YOU CAN GIVE YOURSELF IS:
COMMODORE BUSINESS MACHINES (C.B.M.)

Quoted on the Canadian Stock Exchange,
Montreal

Price: \$ Can. 7.

PLACE YOUR ORDER WITH YOUR BANK OR YOUR BROKER.

MERRY CHRISTMAS AND HAPPY NEW YEAR.

NEXT BULLETIN on January 12, 1965."

Nothing else was said until the bulletin of February 23, when the following appeared in a box on page 11 of that issue:

"Latest reports on C.B.M.—COMMODORE BUSINESS MACHINES show for the first semester of the year, as of December 31st, a 38% SALES INCREASE. PROFITS during this period INCREASED by 62.1% And this does NOT INCLUDE the PORTABLE ELECTRIC TYPEWRITER and the COMPUTER. First deliveries of the portable electric typewriter are to be in May, and from here on to the end of the year, the PROFITS should be enough to raise C.B.M. to our FORECAST LEVEL of \$20.

Yesterday C.B.M., quoted on the Montreal Stock Exchange, closed at \$9.-."

The next few bulletins deal with Analogue Controls Inc. and will be referred to in detail later. On May 11, 1965 there is a brief notice:

"COMMODORE BUSINESS MACHINES

Our Management attended the Hannover Fair and talked with the Vice-President of the company who showed him the PORTABLE ELECTRIC TYPEWRITER which is very REMARKABLE.

EXCELLENT NEWS AHEAD, C.B.M. HAVING ACQUIRED A CERTAIN COMPANY FOR MILLIONS OF DOLLARS CASH.

C.B.M. CLOSED YESTERDAY AT \$10½ ON THE MONTREAL STOCK EXCHANGE. MAINTAIN AND INCREASE YOUR POSITION."

More on this subject was supplied on May 18:

"ATTENTION COMMODORE BUSINESS MACHINE SHAREHOLDERS.

SOMETHING NEW about this company. . . . A RETAIL BUSINESS . . . C.B.M. is about to absorb a chain of STATIONERY RETAIL STORES with shops in all large Canadian cities, the name of which is:

WILLSON STATIONERS & ENVELOPES Ltd.

This company is the **LARGEST SUPPLIER OF OFFICE EQUIPMENT** in this country, with a turnover of **MORE THAN \$7 MILLIONS**, established since 1929, and it sells dozens of articles under different brand names.

ONE HUNDRED THOUSAND DOLLARS has been paid, and **C.B.M.** has a firm commitment for **75½ %** of the shares and will undoubtedly have from **90 to 95 %** on the due date. The price paid was **\$100 per share plus \$4 dividend**, or **\$104 per share**. The issue of this company, quoted on the **Toronto Stock Exchange**, is **50,000 shares**.

FINANCING IS FULLY ASSURED.

The **PORTABLE ELECTRIC TYPEWRITER** will shortly appear all over the world. As the turnover increases, the **C.B.M. INCOME** will be **TERRIFIC**.

Profits are at present excellent and the **NEW REPORT** to be published will show an increase of **80 %** in comparison with the preceding year.

A photograph of the **PORTABLE ELECTRIC TYPEWRITER** is attached.—This company also manufactures hundreds of other products.

Yesterday's dip was the result of **PROFIT TAKING**. At the present price

COMMODORE BUSINESS MACHINES should be **BOUGHT**.

Quoted on the **Montreal Stock Exchange** at **\$9¼."**

The bulletin of May 25 and the subsequent quotations carry the story considerably ahead of what is now being considered and deal with a more sombre atmosphere in the story of **Commodore Business Machines**, but it may be quoted for convenience beside its predecessors.

"CRITICISM IS HEALTHY AND WE WELCOME IT. BUT the statements made by those **DEPRIVED OF KNOWLEDGE** are **RIDICULOUS**. For this reason, we are devoting our Bulletin to answering certain questions and to informing our subscribers as to what is **TRUE** and what is in the realm of **FANTASY**. Or again as to the **PURPOSE** hidden behind certain statements made by certain **FINANCIAL JOURNALS** and **FINANCIAL ESTABLISHMENTS**.

A **BEARISH** tendency is often directed against a security for **LUCRATIVE** purposes. This, believe us, is the case with the **FANTASTIC**, **RIDICULOUS**, and **LYING** statements which are being spread.

We remember the uproar which resulted from a recommendation on **TEXAS GULF SULPHUR** and many other companies. Unfortunately for them, the people who condemned these recommendations were obliged to admit that these shares **DOUBLED** and sometimes **TRIPLED** their prices in a short time (example: **COMSAT**).

At this moment, a certain financial journal is proclaiming: "Sell your C.B.M. . .". Attached to this Bulletin is a photostat of a letter addressed to all COMMODORE BUSINESS MACHINE SHAREHOLDERS registered by name. It is EDIFYING and exceeds the statements which we have published in our Bulletin of last week. (If you would like an exact translation, write or ring us.)

The present C.B.M. cannot be compared with the C.B.M. recommended in 1964 by the above-mentioned financial journal. TO-DAY C.B.M. IS MUCH MORE FLOURISHING, IS RICHER, and its TURNOVER is about FIVE TIMES HIGHER than at the time when it was first recommended in Europe."

Then the bulletin concludes with the following exhortation:

"WE HAVE FREQUENTLY STATED THAT WE ARE NOT INFALLIBLE, BUT AS REGARDS COMMODORE BUSINESS MACHINES AND ANALOGUE CONTROLS WE STILL BELIEVE THAT AT THE PRESENT PRICE THESE STOCKS SHOULD BE KEPT OR BOUGHT. DO THIS THROUGH YOUR BANK OR BROKER."

Again, in the issue of June 8, 1965, is the following note:

"COMMODORE BUSINESS MACHINES (C.B.M.)

The company is going to publish THREE GOOD RESULTS⁴ from the point of view of PROFITS for 1964, after deduction of taxes. The balance sheet was closed on June 30th 1965. This DOES NOT INCLUDE the portable electric typewriter, nor the recent acquisition of WILLSON when completed.

C.B.M. closed yesterday at \$7¾ and should be BOUGHT."

And finally on June 15, 1965 under the heading "American Markets", Commodore Business Machines and Analogue Controls have pride of place:

"Remember May 28th 1962, when DOW JONES dropped 35 points in one session and dropped 220 points from its annual maximum. It still came back again and continued to rise. It has been PROVED that in time, whatever happens, EVERYTHING IS RESTORED TO ORDER. And remember that existing conditions are BETTER and SAFER. SO DO NOT GET EXCITED. There are still many interesting stocks to buy to-day in spite of the present market.

C.B.M.: (\$7⅛-7¼) . . . ANALOGUE CONTROLS: \$3¼-3½"

⁴An incorrect translation of "très bon resultats".

Information Available to Shareholders

It is important to see exactly what information was available to shareholders to support the statements in these bulletins, and generally to sustain a rapidly rising price for Commodore Business Machines shares. The president, Jack Tramiel, on March 5, 1965 sent a letter to the shareholders, accompanied by a brief and unaudited consolidated statement for the six months ending December 31, 1964, a proceeding without precedent.¹

"Dear Shareholder:

Following a highly successful fiscal year ending June 30, 1964, in which sales rose 24% to a new high of \$7,634,469 and net profit rose 31% to \$376,575, your company has continued to make substantial gains for the six month period ending December 31, 1964—the first six months of our current fiscal year.

We are happy to report that consolidated (unaudited) sales for that period reached \$5.2 million compared to \$3.8 million for the comparable period in the previous fiscal year, a gain of 38%. Net profits were up by 62.1% to \$277,830, increasing the earnings per share to 30¢.

With general economies healthy and vigorous, and likely to remain so, we believe our excellent growth record will maintain its pace for the rest of our fiscal year and for the foreseeable future.

Justifying our policy of continuous research and development of new products, we are pleased to report that the new portable electric typewriter developed by our West Germany subsidiary will be available in full quantity late this year for the Canadian and U.S. markets. We are now starting to market our compact electric adding machine.

Production is well up at our German plant, and we are now employing 875 people there. A subsidiary acquired last year, Commodore Industries Limited, Shannon Airport, Ireland, is now producing adding machines largely for the Commonwealth market, freeing our West German production for sales mainly to the U.S. market. A hand adding machine is also being manufactured there for the National Cash Register Co. for exclusive sale in England. The added plant capacity in Ireland and completion of new facilities in Offenburg, West Germany, is enabling us to keep up with the heavy demand for our products.

In Canada, Belpree Co., another subsidiary acquired last year, is now in production in a recently completed 30,000 square foot addition to our Scarborough, Metro Toronto, plant. Belpree is manufacturing a line of steel office cabinets and desks which will sell in the low to medium price range in the Canadian and U.S. markets. As you know, we are already marketing steel office furniture in both Canada and the U.S. By manufacturing our own products, and taking advantage of the discount on the Canadian dollar, we believe that we can be very competitive in the U.S., and continue to supply major department store outlets there and in Canada. We fully expect that greater volume and profits will be a direct

¹Exhibit 2189.

result of our decision to manufacture steel office furniture in the Scarborough plant.

Associated Tool & Manufacturing Co. was also acquired last year as part of our policy of continued expansion and is highly regarded in Canada as a manufacturer and supplier of high quality precision tools and dies for industry. Customers include some of the largest manufacturers in Canada.

Earlier this month, Commodore sold privately 100,000 cumulative, redeemable, convertible preferred shares, Series A, with a par value of \$10.00 each, carrying a fixed cumulative dividend of 6%.

The company also issued and sold privately \$1 million of subordinated notes, non-convertible, at 6¾%. These proceeds will be used to eliminate the company's short term indebtedness. Funds from the sale of the Series A preferred shares will be used primarily to establish a manufacturing facility in the U.S. and to manufacture the new portable electric typewriter. Possible locations for our U.S. manufacturing operation are now under active investigation.

I view the prospects for the remainder of our fiscal year—as well as the long-term prospects—with complete confidence. I believe that our policy of expansion, our constant search for new and improved products, plus a steady growth in our dealerships—now numbering over 2,500 around the world—augurs well for the healthy growth of our still youthful company.

New developments will continue to occur in the coming months and as they do, all shareholders will be kept fully informed.

I wish at this time to express my thanks for your continued confidence in Commodore.

Sincerely,
JACK TRAMIEL
President"

March 5, 1965

Appended to this letter, which is in the form of a coloured folder illustrating Commodore products, and setting out the names of the directors and of subsidiary companies, is the following table giving comparative figures for the first half of the fiscal years 1961 to 1964:

	1964	1963	1962	1961
Sales	\$5,257,556	\$3,809,945	\$2,202,373	\$1,597,408
Profit before Taxes	478,508	305,557	145,264	60,680
Net Profit	277,830	171,350	89,069	51,580
Earning per Common Share	30¢	20¢	11¢	6¢
Common Shares outstanding at end of period	912,625	823,800	816,000	

These figures do not take into account any provision for payment of dividends on the preference shares which are described as having been issued "earlier this month", referring of course to December, 1964, but

this is a trifling source of misunderstanding, compared to what must be judged to be the case in the light of the results reported for the whole fiscal year ending June 30, 1965.¹ At the year-end, in spite of the inclusion of the sales and profits of the Willy Feiler division, the net loss was \$1,051,714 on a consolidated basis. A serious mis-statement is that which refers to the employment of funds derived from the sale of the Series "A" preference shares, which in fact were also used to reduce the indebtedness to Commodore Sales Acceptance. Opposite is Mr. Wolfman's analysis of the consolidated loss of Commodore Business Machines for the year ended June 30, 1965, by individual companies, and it will be noted that, had it not been for the healthy position of Willy Feiler, the consolidated net loss after tax would have been \$1,585,180, taking into account an income tax refund estimated to be \$297,616, based upon the questionable practice of charging all the "non-recurring" items of loss against the operations for the year, even though they were attributable in most cases to operations of previous years.²

Some additional observations should be made about this analysis in that it excludes from the consolidation, in accordance with the company's decision, the results of the operations of International Typewriter Co. Inc., an American subsidiary only 50%-owned by Commodore Business Machines, and those of Commodore Industries Limited, an Irish company which, as will be seen, had been compelled to purchase a large amount of inventory and manufacturing rights from Commodore Business Machines Inc., thus improving the sales position of the latter, and leaving the Irish company in a situation which will be referred to again. Furthermore, there occur in this list the names of two companies, Humber Typewriters & Business Equipment Limited and Pearlsound Distributors Limited, the acquisition of which will also be dealt with. Enough, however, has perhaps been said to judge the good faith of the president of the company, writing as he did to the shareholders on March 5, 1965, at a time when he and his associates were making their considerable holdings of shares available to the public in a rising market.

Insider Trading Results: October 1964-May 1965

In this connection it is appropriate to examine the individual trading accounts of the insiders to see how they fared in these halcyon days of stock market activity in the shares of their company. From October 15, 1964 to the end of May, 1965 some 650,000 shares of Commodore Business Machines were traded on the Canadian Stock Exchange, more, as has been said, than the whole volume of trading from July 1962, when the stock was listed, to the end of September 1964. The records of Barrett, Goodfellow & Co. indicate that, during this later period of

¹Exhibit 2134.

²Exhibit 2190.

COMMODORE BUSINESS MACHINES (CANADA) LIMITED
and Subsidiaries

**ANALYSIS OF CONSOLIDATED LOSS BY SUBSIDIARY
COMPANIES**

for the year ended June 30, 1965

	<i>Operating Profit or (Loss) Before Tax</i>	<i>"Non- Recurring" Items</i>	<i>Net Profit or (Loss) After Tax</i>
Commodore Business Machines (Canada) Limited	(\$ 491,962)	(\$213,776)	(\$ 692,433)
Commodore Business Machines Inc.	(572,903)	(15,717)	(418,567)
Commodore Drycopy Inc.	(162,315)	(438,904)	(489,828)
Commodore Drycopy Limited	(3,720)	—	(2,530)
Humber Typewriters & Business Equipment Limited	(3,930)	—	(4,416)
Associated Tool & Mfg. Co. Limited	11,694	(7,766)	5,992
Shelburne Tool Co. Limited	(70)		(70)
Belpree Company Limited	(1,724)		(1,623)
Pearlsound Distributors Limited..	18,295		18,295
	(\$1,206,635)	(\$676,163)	
Adjustment	(33,890)	33,890	
Less: Total Tax Refund —Estimated	297,617		
	(942,908)	(642,273)	(1,585,180)
Add: Administrative Expense Adjustment—Willy Feiler	(29,209)	} —	533,467
Less: Willy Feiler— Profits after tax	562,677		
Net Losses	<u>(\$ 409,440)</u>	<u>(\$642,273)</u>	<u>(\$1,051,713)</u>

almost seven months, the aggregate sum of \$1,037,313 was paid out to C. P. Morgan, of which \$657,813 was paid either directly to him or to his account at the Toronto-Dominion Bank, \$197,500 at his direction to Daylite of Grand Bahama, and the remaining \$182,000 to Associated Canadian Holdings for the acquisition from that company of his shares of Commodore Business Machines at \$3.50 per share, which has been referred to above. The disposal of these profits will be the subject of further comment, based on the latest investigations dealing with the net worth of C. P. Morgan. He and his wife, beginning in 1961 and ending in July 1965, bought 457,700 and sold 446,595 shares, ending in a long position of 11,105 shares. Their total cost was \$1,555,774.72 and their sales yielded \$2,022,843.22, with a net profit of \$467,068.50. They had therefore 11,105 shares free in their hands. These figures must be qualified by the observation that they include the sale of the Morgans' Commodore Business Machines shares to Associated Canadian Holdings in exchange for the stock of the latter, and the re-purchase of the shares from that company at \$3.50 per share pursuant to the terms of the option agreement; that there are indications that some portion of their profits were given to or accrued to W. L. Walton and Harry Wagman, if one is to assume that both Morgan and Wagman held a small portion of their shares in trust for Walton, and that Wagman, who received 22,500 of the Streit shares, paid Morgan nothing for them, which would appear to be the case; and that it also included most, if not all of the amounts remitted to Frank Kaftel, or I.F.A.S., which will probably never be exactly determined. Morgan was at least on one occasion unsuccessful in persuading Jack Tramiel to have Commodore Business Machines retain the services of Kaftel for a fee, a proposal which Tramiel unkindly suggested should be submitted to the board of directors of Commodore Business Machines. It would be fair to say that the state of these accounts should be attributed to Mr. and Mrs. Morgan and Walton and Wagman, less any expenses incurred in the course of the transactions with Harold Antin and Frank Kaftel.¹

N.G.K. Investments, of the shares of which British Mortgage & Trust held 20%, Mr. and Mrs. W. P. Gregory 12%, Carman G. King and his family 14% and Morgan, Walton and Wagman 22%, the directors of which included Morgan, King and Gregory and for which Morgan made no secret of having entire discretion as to investments, bought and sold 26,500 shares making a net profit of \$69,165,² including a sale of 6,833 shares to the C. P. Morgan account at a price of \$5 on November 10, 1964, when the market price was \$6.50 per share. Dallas Holdings, a Trio company, between June 1962 and July 1965 bought 385,417 and sold 373,017, resulting in a long position of 12,400 shares at an average cost of \$5.75 each, after paying \$1,041,622.10 and

¹Exhibit 2191.

²Exhibit 2192.

receiving \$971,637.13.³ Trans Commercial Acceptance, a company owned by Tramiel and Kapp, traded between July 1964 and May 1965, buying 126,950 and selling 61,170 shares and paying \$820,980, receiving \$531,271 and achieving a long position of 65,780 shares at an average cost of \$4.40.⁴ The Hugo Oppenheim Bank in Berlin, the affairs of which were, as will be seen, entirely under the control of Jack Tramiel, its largest shareholder, began trading on September 16, 1964, and by the end of June 1965 had bought 180,020 shares and sold 120,705, leaving a net accumulation of 59,315 after payments in the amount of \$1,181,143 and receipts of \$810,463. Its remaining shares cost approximately \$6 each. Its Canadian subsidiary, Hugo Oppenheim-bank (Canada) Limited, also under the control of Tramiel, bought a total of 54,270 shares and sold 35,120, remaining in a long position of 19,150 shares at an average cost of \$7. This company's holdings, in particular, were completely sold out by O'Brien & Williams to cover margined accounts after the collapse of Atlantic Acceptance. Valley Farm and Enterprises, another Trio company, trading from June 1962 until February 1963, bought 385,518 shares and sold 391,368, being short 5,850. It paid \$930,554.70 and received \$1,218,835.87 for a net revenue of \$288,281.17, less whatever it might have cost it to cover its short position, which may in any event have been taken care of by the stock dividend of one share for each twenty held, paid in December 1964.⁵ Evermac Office Equipment, owned by Tramiel and Kapp, began to buy shares on August 15, 1962 from Don Mills at a price of \$3, and between then and May 1965 it bought 44,258 shares and sold 31,723. Its net expenditure was \$85,911.40 at a cost of between \$6.50 and \$6.75 per share.

The trading of the Tramiel, Kapp and Silberman families was subject to a special consideration involving Associated Canadian Holdings. Between November 5, 1958 and September 22, 1965, Jack and Helen Tramiel bought 139,982 shares and sold 145,179, the sales after the Atlantic collapse having been made by the Mercantile Bank of Canada in August and September 1965 in the amount of 21,310 shares, which were pledged as collateral to loans made by that institution to Tramiel. In the end they were short 5,197 shares, having paid \$119,307.43 and received \$483,352.80 for a net revenue of \$364,225.39. It will be recalled that they had sold almost 100,000 shares of Commodore Business Machines to Associated Canadian Holdings, receiving in exchange shares of that company having a value of \$3.50 for one common share and one-half a preference share. If this transaction had not been entered into, their cash proceeds would be only \$17,529.39, and their position would have been long 93,859 shares at no cost to them.⁶ Similarly

³Exhibit 2193.

⁴Exhibit 2194.

⁵Exhibits 2195-7.

⁶Exhibit 2198.

Manfred and Estelle Kapp, from November 1958 until April 1965, bought 141,874 and sold 123,576 shares at a cost of \$121,225.66 for total proceeds of \$468,602.50, an apparent net profit of \$347,376.84. If they had not sold 49,708 shares to Associated Canadian Holdings, their net revenue would have been \$11,177.34, and their position would have been long 114,350 shares at no cost. Benjamin and Regina Silberman paid \$6,017 for 27,500 shares, of which they sold 24,750 between November 1958 and December 1961, giving them a net revenue position of \$80,608. If they had not entered into the transaction with Associated Canadian Holdings, they would have had their 27,500 shares for their original cost, their only sale being to that company.⁷ Associated Canadian Holdings is, of course, now bankrupt, and the position of its shareholders can only be determined after action by it to enforce the terms of the option agreement, pursuant to which there were set up on its books debts by the Tramiels, Kapps and Silbermans consequent upon an obligation to pay \$3.50 per share for 250,600 shares.

The trading of J. A. Medland and Carman G. King, both directors of Commodore Business Machines, was simple enough. The former and members of his family, between 1961 and June 1965, bought 84,700 shares, of which 72,500 were treasury stock acquired in 1960 and 1961 under circumstances which have been referred to, and 10,000 bought on July 10, 1962 just before the listing of the stock on the Canadian Stock Exchange. All of these shares were sold between 1962 and June 1965 for a net profit of \$251,106.⁸ King acquired 39,710 shares beginning in 1960, but did not start selling until the listing of the stock, and then, between August 1962 and October 1965, he sold 47,120 shares, apparently being short 7,410 shares and having realized a net revenue of \$229,822.56.⁹

In this connection King testified to the Commission on December 21, 1966¹⁰ that he had discussed his trading with Mr. Wolfman, and pointed out that, because of his holdings of convertible debentures, he was not short any shares in October and his profit was only in the neighbourhood of \$175,000. There is no reason to doubt that this was the case.

Throughout the period of this trading Jack Tramiel and Manfred Kapp were directors of Commodore Business Machines, and together with C. P. Morgan, who became a director on October 17, 1962, were insiders in the most extreme sense of the term. Carman King was a director from October 3, 1960 to June 22, 1965. J. A. Medland returned to the board on October 17, 1962, and remained until June 22, 1965. All of them were substantially enriched by their market operations in the stock of Commodore Business Machines, but only to Morgan,

⁷Exhibits 2201-2.

⁸Exhibit 2200.

⁹Exhibit 2203.

¹⁰Evidence Volume 93.

Tramiel, Kapp and Goodfellow, who became a director on November 20, 1963, can there definitely be imputed knowledge of the transactions with Kaftel. Tramiel, indeed, denied on oath before the Commission that he had attended any meeting with Kaftel, other than the first on October 31, 1964, but Kaftel said he was present at a second meeting on December 3 with Morgan and Goodfellow and took an active part in the discussion, even to the extent of expostulating against the payment of \$25,000 to Kaftel for the week under discussion, because 35,000 shares had not been sold. The attendance of Tramiel at this second meeting is indicated by the records of the Hotel Georges V, and in this conflict of the evidence I prefer to rely on Kaftel's unsworn statement.¹¹

Cheques to "F. Kulunderino"

There follows a list of cheques drawn on the Bank of Nova Scotia account of Daylite of Grand Bahama Limited, signed by E. Last and H. Wagman, and made payable to "F. Kulunderino".¹

<u>Date</u>	<u>Amount</u>	<u>Deposited to the credit of</u>
June 26, 1964	\$45,000	Galco Trust Reg.
October 14, 1964	35,000	A. Gillieron & Banque Jordaans S.A.
October 26, 1964	25,000	L. G. Beaubian, & J. L. Levesque Inc.
November 5, 1964	25,000	W. C. Pitfield Company Ltd.
November 12, 1964	25,000	Boucqueau Luyckx & Co.
November 19, 1964	25,000	W. C. Pitfield & Company, Montreal
November 27, 1964	25,000	W. C. Pitfield & Company
December 8, 1964	25,000	W. C. Pitfield & Company
January 8, 1965	10,000	W. C. Pitfield & Company
January 15, 1965	25,000	W. C. Pitfield & Company
January 22, 1965	25,000	W. C. Pitfield & Company
January 29, 1965	27,500	W. C. Pitfield & Company
February 6, 1965	12,500	W. C. Pitfield & Company
February 12, 1965	42,400	W. C. Pitfield & Company
	<u>\$372,400</u>	

The first one dated June 26, 1964 in the amount of \$45,000, endorsed "F. Kulunderino" and deposited to the credit of Galco Trust Reg., has already been referred to, and the evidence before the Commission is that funds transferred in this case came from those contributed for this purpose to Daylite of Grand Bahama. This cheque is the one Kaftel denied

¹¹Appendix G.

¹Exhibit 3894.

any knowledge of, and by reason of its date would appear to be related to some transaction other than that involving Commodore Business Machines shares, and perhaps to Lucayan Beach Hotel Limited as the payment made on behalf of Allen Manus, of which Kaftel said he got some \$20,000. He denied that the endorsement on this cheque was in his handwriting. The next six cheques, beginning with that dated October 14 for \$35,000 and ending with the cheque dated December 8 for \$25,000, are all in effect admitted by Kaftel in his statement as having been received, although he said that in the absence of any written records he could not be sure of the amounts. The proceeds of the remaining six cheques, beginning with that of January 8, 1965 for \$10,000 and ending with that of February 12, 1965 for \$42,400, he said he did not receive, and did not know who did. There may have been some reservation, not communicated to the Commission, in the words of his statement which are, specifically, as follows, "I say that I did not receive the proceeds of these cheques and I do not know who did". They are none the less all endorsed "F. Kulunderino", and in the same hand as those which have been at least tacitly acknowledged. There is another point of similarity affecting most of them, in that all the cheques in respect of which W. C. Pitfield & Co. in Montreal was the ultimate payee are initially endorsed in favour of Boucqueau Luyckx & Co. of Brussels. In three instances these cheques passed through the hands of Swiss banks, and all of the cheques which ultimately reached W. C. Pitfield may well have had nothing to do with the affairs of Kaftel, but may have been made thus payable in settlement of outstanding balances in Canadian funds by the intermediate payees. Kaftel said that, at this third meeting at the Hotel Georges V with Morgan and Goodfellow on January 10, 1965, the terms of the deal in Commodore Business Machines shares had changed, and he was to receive \$8,000 per week henceforth for supporting them in his bulletin for four weeks. It was at this meeting that the arrangements were made with respect to the manipulation of the shares of Analogue Controls. There seems to be little doubt that Kaftel received, or otherwise disposed of, all the funds transferred by these cheques of Daylite of Grand Bahama in the total amount of \$372,400, of which all but the first \$45,000 were transferred to Daylite of Grand Bahama from Morgan's accounts. Kaftel was a most difficult witness to pin down and, although he himself had suggested the circumstances under which he was interviewed, since he said he was suffering from heart disease and could not travel, counsel had to endure many hours of rambling irrelevancy in order to distil from his conversation the concise statement which he eventually, after many emendations, acknowledged to be a true presentation of his evidence. If all of the money paid to Kaftel, of which Jules Schoen, as was admitted, was entitled to 10%, was paid in respect of services in the Commodore

Business Machines market operation, Morgan's profit of \$467,068.50 was drastically reduced, particularly if some portion of it accrued to Walton and Wagman.

Convertible Debentures Series A, B and C

In addition to its common stock Commodore Business Machines issued convertible debentures and preference shares. Three series of debentures were issued, the first being for \$1,000,000, dated November 1, 1962, maturing November 1, 1974, convertible and yielding 7% per annum with share purchase warrants attached, and were underwritten by Annett & Co.,¹ and the following letter from Carman G. King to Jack Tramiel, dated September 21, 1962, sets out the initial understanding and requirements of the underwriter:

"Dear Jack: Re: Commodore Business Machines (Canada) Limited

This will confirm our telephone conversations of today in which we have agreed, subject to certain conditions, to underwrite \$1 million 7% 12-year convertible debentures, convertible at \$4.00 per share for the term of the debentures at \$94 and accrued interest and 200,000 share purchase warrants, exercisable at \$4.50 per share for 12 years at 5 cents per warrant, applicable on 100,000 warrants only.

The convertibles will be non-convertible until July 1, 1963 and the warrants will be non-exercisable until July 1, 1963.

The convertibles will be redeemable at a premium of 6% on thirty days' notice on or before November 15, 1964, decreasing one half of one percent each year thereafter.

There will be a 100% sinking fund commencing November 15, 1965.

The debentures will be a first floating charge after bank loans and secured debt.

This undertaking is made subject to our being fully satisfied on the condition of the business, the verification of any representations, subject to Annett & Company Limited signing a mutually satisfactory underwriting agreement, and subject to your undertaking to place up to \$500,000 of life insurance on your life for the security of the debenture-holders.

It is also on the condition that Mr. C. Powell Morgan become Chairman of the Board, that Mr. Aubrey Medland be appointed to the Board and that Annett & Company Limited make another nomination.

With kind regards,
Sincerely yours,
'Carman G. King.'

CGK/EB.

P.S. This letter does not constitute an underwriting but is a letter of intent only. 'C.G.K.' "

Annett & Co.'s price was subsequently reduced to \$93.50 per \$100 face value. Medland in his evidence did not mention King's insistence on his rejoining the board of Commodore Business Machines as an element in

¹Exhibit 346.

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his own decision, but clearly King must have been one of those who urged his return. Douglas R. Annett was the additional nominee, and Morgan, Medland and Annett joined the board on October 17. Half of the issue was taken by Dallas Holdings and Lambert Management Corporation, in amounts of \$200,000 and \$300,000 respectively, at a discount of 5% as will be seen, and the balance was fairly well distributed, mostly at par. Both Dallas Holdings and Lambert Management Corporation borrowed money to make this purchase from Aurora Leasing Corporation, the former on November 30 and the latter, in the guise of Chisholm & Co., on December 10 at 7%.² The main features of the distribution are illustrated as follows:³

COMMODORE BUSINESS MACHINES (CANADA) LIMITED Series A Debenture Issue UNDERWRITTEN BY ANNETT & COMPANY LIMITED

<i>Sales per records of Annett & Company</i>	<i>Payment Received</i>	<i>Par Value of Debentures</i>
Dallas Holdings Limited—at 95	\$ 189,940.00	\$ 200,000.00
Lambert Management Corporation— at 95	284,910.00	300,000.00
—at 100	6,997.90	7,000.00
R. D. Steers and Company—at 97	4,848.50	5,000.00
W. D. Latimer—Personal—at 97	9,697.00	10,000.00
	<hr/> 496,393.40	<hr/> 522,000.00
The balance issued at 100 to the following:		
British Mortgage & Trust	49,985.00	50,000.00
Mr. A. Leith—c/o Eatons Estates Office	39,988.00	40,000.00
C. G. King—c/o Annett & Partners	24,922.50	25,000.00
D. R. Annett	4,998.50	5,000.00
Mr. C. C. Annett	1,999.40	2,000.00
R. A. Goodfellow	4,998.50	5,000.00
Jack Tramiel	7,997.60	8,000.00
Argyle Development Corp.	24,992.50	25,000.00
W. H. Wallace	9,997.00	10,000.00
Bank of Montreal—a/c 200—Mr. G. A. Pearce	49,995.50	50,000.00
Montreal Trust Co.—Investment Dept.—Dr. D. Jordan	24,992.50	25,000.00
Bank of Nova Scotia—Purchases through New York Branch	14,995.50	15,000.00
Royal Bank—30 St. Clair West— Account #1632	4,998.50	5,000.00

²Exhibits 1660.1 and 1660.2.

³Exhibit 2208.

<i>Sales per records of Annett & Company</i>	<i>Payment Received</i>	<i>Par Value of Debentures</i>
Bank of Nova Scotia for:		
Alan T. Christie of Lambert & Co.	49,985.00	50,000.00
J. Tramiel	4,998.50	5,000.00
Mrs. K. P. Lelandais—formerly c/o Lambert & Co.	9,997.00	10,000.00
Mrs. E. C. Land—c/o Lambert & Co.	9,997.00	10,000.00
A. C. Maher—c/o Lambert & Co.	4,998.50	5,000.00
Miss A. Witko—c/o Lambert & Co.	3,998.80	4,000.00
Fenimore Fisher—President of Analogue Controls	9,997.00	10,000.00
Other regular U.S. customers of Annett	32,990.10	33,000.00
Other Canadian customers (\$9,000 to Annett & Co. employees)	157,512.25	157,500.00
Total subscription	1,045,728.55	1,071,500.00
Purchased from Brokers—Dec. 3/62 at 103½	(20,700.00)	(20,000.00)
	1,025,028.55	1,051,500.00
Less: Short Position—Assuming same cost to cover (103½)	53,302.50	51,500.00
Total value of issue	971,726.05	1,000,000.00
Paid to Commodore Business Machines (Interest \$5,561.64)	945,561.64	
Estimated Profit on Underwriting	\$26,164.41	

All the proceeds of this issue went to Commodore Sales Acceptance, and substantially reduced the outstanding loans of that company to Commodore Business Machines. Thereafter the level of loans from Commodore Sales Acceptance again rose rapidly, and it must be borne in mind that \$500,000 of the total proceeds, employed to reduce the standing balance in favour of Commodore Sales Acceptance, was lent by the latter to Aurora to finance the purchases of Dallas Holdings and Lambert Management Corporation. A curious and characteristic footnote to this issue is provided by a letter, dated January 2, 1963, from Annett & Co. to Morgan about a legal bill for the underwriting, referring to an agreement that it should be paid as to \$2,500 by Commodore Business Machines, the balance being payable as to 50% by Annett & Co., 30% by Lambert & Co. and 20% by Morgan himself. The letter⁴ asks for

⁴Exhibit 1761.1.

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a remittance of \$386. At the foot of the page there is a note in Morgan's handwriting: "Harry get a bill from Annett for \$386. Should be charged to Dallas. C.P.M."

The Series B debentures, also convertible and yielding 7% per annum with share purchase warrants attached, were issued on May 13, 1963 for a total amount of \$600,000, and were subscribed for by the following persons in the amounts set opposite their names:

D. R. Annett	\$ 50,000
Carman G. King	50,000
Manfred Kapp	100,000
C. Powell Morgan	100,000
Harry Wagman	100,000
William L. Walton	100,000
J. A. Medland	100,000
	<u>\$600,000</u>

These were issued at par, and all the subscribers, except Medland, paid for them by borrowing the necessary funds from British Mortgage & Trust Company, pledging the debentures as security, plus 42,725 shares of Commodore Business Machines, which were registered in the name of H. Wagman in trust, and were among the shares belonging to the Morgan, Tramiel, Kapp and Silberman families, ultimately transferred to Associated Canadian Holdings, although remaining in pledge. The rate of interest on this loan of \$500,000 was 7%, and it was repayable on October 20, 1963. As an additional inducement, the trust company received warrants to purchase 10,000 common shares of Commodore Business Machines at \$5.50 per share.⁵ Solomon, Singer & Rosen, not its general solicitors, acted for British Mortgage & Trust in this intimate transaction.

The Series C debentures were of the same order, were issued in May 1964 for an aggregate face value of \$600,000 and were, like Series B, privately placed, but this time at a 5% discount. N.G.K. Investments bought \$250,000 worth, Associated Canadian Holdings \$250,000 and Jack Tramiel \$100,000. N.G.K. Investments borrowed \$250,000 from Aurora Leasing, but only paid \$237,500 plus accrued interest, as did Associated Canadian Holdings, to Commodore Business Machines; Aurora Leasing borrowed it from Commodore Sales Acceptance. Tramiel borrowed \$80,000 from the Bank of Nova Scotia, pledging his debentures, and the remaining \$15,000, without giving security, from his own company, Trans Commercial Acceptance. He then paid \$82,000 to the American Express Company in New York on June 1,⁶ and \$14,116.33 to Commodore Business Machines,⁷ which recorded two separate receipts from him in the latter amount, and for \$81,957.64. The

⁵Exhibit 347.

⁶Exhibit 2211.

⁷Exhibit 2212.

payment to the American Express Company is unexplained, but the proceeds of this issue were divided between Commodore Sales Acceptance and the American Express Company, in the latter case as a standing deposit is the amount of \$377,625 in U.S. funds, to secure a loan made by it to the Willy Feiler Company of D.M. 1,500,000. All three issues of debentures were secured by a floating charge on the property of Commodore Business Machines, evidenced by conveyance to the Montreal Trust Company as trustee.

The Subordinated Note and Preference Share Issue of December 1964

The last security financing by Commodore Business Machines in the period under consideration in this report occurred in December 1964, and was by no means as straightforward in its outcome as its predecessors. It took the form of an issue of \$1,000,000 of 6¾ % subordinated notes, secured by trust indenture between the company and the Montreal Trust Company as trustee, and \$1,000,000 in the form of 100,000 preference shares (Series A) yielding 6%. The trust deed was dated December 1, 1964, and apparently the whole month of December was devoted to the intricate transactions, which had a profound effect on the future of the company and on the situation of its principal creditor, Atlantic Acceptance, and its subsidiaries, Commodore Sales Acceptance and Commodore Factors. The purchaser of the whole package was the Hugo Oppenheim Bank in Berlin. The agreement of sale took the form of a letter, dated December 1, 1964, from Commodore Business Machines (Canada) Limited of 946 Warden Avenue in Toronto to Hugo Oppenheim und Sohn in Berlin, written in English, in which the price of the million dollar issue of notes was agreed to at \$975,000, and of preference shares at \$950,000. The notes were to mature on December 1, 1969.¹ On December 12 the Berlin bank entered into an option agreement with Trans Commercial Acceptance, also of 946 Warden Avenue, Toronto to put the securities to the latter company at par; and also, and incidentally, to sell to it 100,000 common shares of Commodore Business Machines for \$650,000, this being part of another story involving Five Wheels Limited and other companies, which must await more detailed treatment with the other affairs of Hugo Oppenheim und Sohn.² The sole effect of that part of the transaction which is immediately relevant was to put a profit of \$75,000 in Canadian funds forthwith into the coffers of the bank. Trans Commercial Acceptance required \$2,000,000 to pay Hugo Oppenheim und Sohn, and received \$1,500,000 from British Mortgage & Trust Company against its promissory note, due February 1, 1965, with interest at 7%, pledging the Commodore Business Machine notes and preference shares as security. The remaining \$500,000 was borrowed by Trans Commercial Acceptance

¹Exhibit 349.

²Chapter X.

from Commodore Sales Acceptance without security. On December 29 the bank records of Commodore Business Machines showed a deposit of \$1,925,000, and those of Trans Commercial Acceptance³ of \$2,805,000. In fact on the same day, December 23, in addition to the \$2,805,000 deposited, there were additional deposits of \$254,444.55 and \$5,000. The ingredient of \$805,000 was advanced to Trans Commercial Acceptance by Commodore Business Machines, treating \$305,000 as repayment of a loan previously made to it by Trans Commercial Acceptance and \$500,000 as a deposit with that company. Trans Commercial Acceptance was now in a position to pay \$2,000,000 to Hugo Oppenheim und Sohn and \$1,000,000 to Commodore Sales Acceptance. Commodore Business Machines on December 23 paid Commodore Factors \$1,120,000, in respect of loans to Commodore Business Machines Inc. of \$316,481.56, Commodore Drycopy Inc. of \$157,100.64, Baronet Associates of \$571,706.80 and of U.S. exchange in the sum of \$75,711. On January 13 and January 14, 1965 Solomon & Singer painstakingly reported to Hugo Oppenheim und Sohn and Trans Commercial Acceptance, for both of which they had been acting, and to both of which they sent bills.⁴

It is difficult to sever that portion of this transaction, dealing with the immediate relationships of Commodore Business Machines, Commodore Sales Acceptance and British Mortgage & Trust Company, from contemporary entanglements, but the effort must be made. All of what follows happened on December 23, 1964. British Mortgage & Trust Company lent Trans Commercial Acceptance \$1,500,000, and Commodore Sales Acceptance lend the same company \$500,000. Trans Commercial Acceptance paid the aggregate of \$2,000,000 to Hugo Oppenheim und Sohn for the issue of Commodore Business Machines debentures and preference shares bought by the bank from Commodore Business Machines, and put by it pursuant to option to Trans Commercial Acceptance, which then pledged these securities with British Mortgage & Trust. Hugo Oppenheim und Sohn paid Commodore Business Machines \$1,925,000 for these securities, thus realizing a profit of \$75,000. With these funds Commodore Business Machines paid Trans Commercial Acceptance \$805,000 and Commodore Factors \$1,120,000. Trans Commercial Acceptance repaid Commodore Sales Acceptance the \$500,000 advanced to it the same day, together with an additional \$500,000, by means of one cheque in the amount of \$1,000,000. In this fashion \$1,500,000 of fresh funds, costing 7% per annum, had been lent to the Commodore Business Machines group by British Mortgage & Trust, and \$1,620,000, which had cost it anywhere from 8½% to 12%, had been paid back to Commodore Sales Acceptance and Commodore Factors. The amount of \$75,000 retained by

³Exhibit 2218.

⁴Exhibits 2214-5.

Hugo Oppenheim und Sohn, plus the additional \$120,000 in loan repayment, had been found in funds from other sources represented by the additional deposits of \$259,444.55. The loan to Trans Commercial Acceptance from British Mortgage & Trust was not repaid in February, 1965, and at June 17 of that year had only been reduced by \$50,000.⁵

Wilfrid Gregory, who only expected to accommodate Tramiel with this very large amount of money for three weeks, asserted that it was understood that his company was to get convertible debentures and preferred stock as security, and as a bonus an option on 20% of the stock of Hugo Oppenheim und Sohn. He blamed Solomon, quite unjustifiably as the correspondence shows,⁶ for "completely letting us down", since the \$1,500,000 had been sent to him in escrow pending the receipt of this bonus. Tramiel, he said, had told him that Morgan would get the money for British Mortgage & Trust at any time Gregory wanted it, and that Morgan had confirmed this.⁷ Morgan denied having given such an undertaking, and said simply that Gregory had been tricked by Tramiel. As a result of this disillusionment Gregory gave Tramiel and Kapp three months to pay their personal loans from British Mortgage & Trust, and in the event this ultimatum proved to be too generous.

Such is the story of the financing of Commodore Business Machines to which \$5,021,000 was contributed principally by British Mortgage & Trust Company in the amount of \$2,525,000, and Aurora Leasing Corporation in the amount of \$1,192,178.60, as a backward glance at Table 37 will illustrate and confirm. Aurora's money, as has been seen, was derived in great part from Commodore Sales Acceptance which was, in turn, wholly beholden to Atlantic. By the complicated and barely intelligible transaction last referred to a great load had been shifted from Commodore Business Machines to Trans Commercial Acceptance, a company which, in spite of Tramiel's quaint idea that loans supplied by Morgan meant ownership by Morgan, was in fact owned by Tramiel and Kapp. It was incorporated as a private company in Ontario on December 16, 1963.⁸ The permanent directors were Tramiel, Kapp and Carl M. Solomon, Tramiel being the president and Kapp the secretary. Until September 10, 1964 there were only three common shares outstanding valued at \$3, but on that date Associated Canadian Holdings subscribed for 14,997 common shares at \$1 per share and 10,000 preference shares at \$10 per share, and paid \$114,997 in cash. The company remained wholly-owned by Associated Canadian Holdings until December 23, 1964, when the latter sold all the shares to Hugo Oppenheim-bank (Canada) Limited. A renewed examination of Table 38, which is

⁵Exhibits 2217-9.

⁶Exhibit 4636.

⁷Evidence Volume 116.

⁸Exhibit 296.

the history of loans made by Commodore Sales Acceptance to Commodore Business Machines and its related companies, is now necessary to appreciate the effect of the journal entry in the books of Commodore Sales Acceptance which transferred to this fledgling, without invested capital or assets, the indebtedness to Commodore Sales Acceptance of Commodore Business Machines, in respect of inventory advances and a note receivable at 12%, of Commodore Drycopy Limited, Humber Typewriters & Business Equipment Limited and Evermac Office Equipment Company Limited in the total amount of \$917,830.34.

Purchase of Trans Commercial Acceptance by Associated Canadian Holdings

From December 1963, therefore, until September 1964, Trans Commercial Acceptance had as its only assets the \$3 invested capital, plus accounts receivable in respect of any loans made by it, which in turn were exactly offset by sums of money borrowed from Commodore Sales Acceptance in order to enable it to make these loans. The method by which Associated Canadian Holdings, a company over 60% owned by the Tramiel and Kapp families, bought Trans Commercial Acceptance, a company owned by Tramiel and Kapp entirely, requires scrutiny. To begin with Associated Canadian Holdings gave three cheques to Trans Commercial Acceptance, the first dated July 27, 1964 for \$40,000¹ signed by Wagman and Tramiel, the second dated August 5, 1964 for \$25,000, signed by Tramiel and Kapp,² and the third also dated August 5 and signed by Tramiel and Kapp, for \$50,000.³ According to the loan register of Aurora Leasing Corporation, the first \$40,000 was borrowed from Aurora by Associated Canadian Holdings on July 27 and paid to Trans Commercial Acceptance on the same day. Thereupon, on July 31, Trans Commercial Acceptance borrowed \$65,000 from Commodore Sales Acceptance and on August 6 lent \$50,000 of this money to Jack Tramiel, who deposited it to his personal account at the Mercantile Bank of Canada. Next day Tramiel borrowed \$50,000 from the National Bank, pledging as security 22,700 shares of Commodore Business Machines belonging to Associated Canadian Holdings, the amount then standing to his credit being \$99,880, and representing the aggregate of \$100,000 thus acquired, less a small deduction apparently from the Trans Commercial Acceptance loan. Also on the same day, Tramiel wrote a cheque to Barrett, Goodfellow & Co. for \$99,880, and the 22,700 shares of Commodore Business Machines were supplied, according to that firm's memorandum, in the following fashion:⁴

¹Exhibit 2220.

²Exhibit 2221.

³Exhibit 2222.

⁴Exhibit 2223.

"Aug. 6/64

Receive: Commodore Shares	21720	
Deliver from: Assoc Cdn Holdings		
To: Jack Tramiel Acct.	980	
	Shs 22700	— Switched complete to Assoc. Cdn.
Mercantile Bank will call		
And pay \$99880.00		
Against delivery of	22700 shares	cleared Aug 6/64
Assoc. Cdn. request Ck.		Ck to be picked up by 10 a.m. Aug. 7/64.

Letter of authorization from Mr. Tramiel pending ? no longer required."

When Barrett, Goodfellow & Co. assembled the 22,700 shares, delivered them to the Mercantile Bank and received \$99,880 from Tramiel, they paid the money forthwith to Associated Canadian Holdings which had on the same day entered into an agreement with Tramiel,⁵ reciting his debt to Trans Commercial Acceptance for \$49,880 and to the Mercantile Bank for \$50,000, the deposit of the 22,700 shares with the bank as security, and that he was at all times acting as trustee for Associated Canadian Holdings in borrowing these sums. The agreement, which was executed by Tramiel, and for Associated Canadian Holdings by Kapp and Wagman, contains an acknowledgment of Tramiel's status as trustee for the company, by Tramiel that the 22,700 shares pledged with the bank are beneficially owned by the company, and Tramiel's covenant to deliver them to the company or its nominees upon release by the bank.

The records of Associated Canadian Holdings show that it repaid Tramiel \$50,000, with interest running from August 7, 1964, by two cheques, the first, dated February 16, 1965,⁶ in the amount of \$17,500 made payable to the Mercantile Bank, and the second, dated April 1, 1965, to Tramiel personally in the amount of \$33,040.70.⁷ Although Associated Canadian Holdings treated this as repayment in full of its indebtedness to Tramiel, the loan card in respect of his indebtedness at the Mercantile Bank⁸ records only the payment of February 17, 1965 in the principal amount of \$17,500, leaving a balance owing of \$32,500, since Associated Canadian Holdings' cheque for \$33,040.70 of April 1 was deposited directly into Tramiel's personal account. Moreover, on March 2 an additional \$50,000 had been borrowed by Tramiel so that

⁵Exhibit 2224.

⁶Exhibit 2225.

⁷Exhibit 2226.

⁸Exhibit 2227.

the outstanding balance was \$82,500. The loan not having been repaid, Associated Canadian Holdings did not receive back its 22,700 shares of Commodore Business Machines, although there was a subsequent reduction of the principal amount by \$6,000 on June 8, 1965 resulting from the sale of shares of Atlantic Acceptance held as additional collateral by the Mercantile Bank. Associated Canadian Holdings thus invested \$115,000 in the shares of Trans Commercial Acceptance, first borrowing \$40,000 from Aurora Leasing, secondly \$50,000 from Trans Commercial Acceptance through Tramiel as its nominee, and thirdly the balance of \$25,000 by using part of the proceeds of the loan of \$49,880, made to him by the Mercantile Bank on its behalf, against the security of 22,700 shares of Commodore Business Machines which it owned but did not recover. Both the \$50,000 lent in this manner by Trans Commercial Acceptance to Associated Canadian Holdings, and the \$40,000 lent to the latter by Aurora Leasing, were Atlantic funds.

The Interposition of Trans Commercial Acceptance and Baronet Associates Inc.

The loan records of Commodore Sales Acceptance reveal the true purpose behind the creation of Trans Commercial Acceptance, and show that, whereas the former had been receiving 12% on its inventory advances to Commodore Business Machines, on its large "note receivable" loan and on its loans to subsidiary companies, Commodore Drycopy Limited and Evermac Office Equipment, and 15% on loans to Humber Typewriters before the consolidation and transfer of the indebtedness to Trans Commercial Acceptance in December 1963, Commodore Sales Acceptance thenceforth charged Trans Commercial Acceptance only 8½% per annum on the outstanding balance of \$917,830.34 and all balances thereafter. Trans Commercial Acceptance, however, continued to charge these debtors 12%, and to that extent only Humber Typewriters benefited from the change. The high point of the Commodore Sales Acceptance loans to Trans Commercial Acceptance was reached in August 1964 at a round figure of \$1,021,000, having declined by June 17, 1965 to approximately \$912,000. For the year ended December 31, 1964 the financial statements of Trans Commercial Acceptance¹ show a net profit of \$26,674, being the difference between interest revenue of \$118,000 and interest paid of \$82,000, with some minor office expenses.² This arrangement was embodied in agreements between Commodore Business Machines and its subsidiaries, on the one hand, and Trans Commercial Acceptance on the other, the first being dated June 11, 1964 and executed for both parties by Manfred Kapp as secretary-treasurer of both companies.³ All the agreements are of even date with

¹Exhibit 298.

²Exhibit 2233.

³Exhibit 2229.

the first and similarly executed. They all provide for Trans Commercial Acceptance lending to the other party 100% of the net invoice balance of the inventory at 12% interest, and similarly of accounts receivable, for a period of five years. Also in June 1964, the same situation was arrived at with respect to the loans made by Commodore Factors Limited to Commodore Drycopy Inc., A.C.E. Business Machines Inc., Jay-Man Distributors Inc., Commodore Business Machines Inc., and Analogue Controls Inc., which were consolidated and transferred to a new debtor by the name of Baronet Associates Inc., by journal entry, in the aggregate amount of \$1,590,185.03. Baronet Associates had been incorporated as a New York Company on February 26, 1964, with two shares initially issued of \$50 each to Jack Tramiel and Manfred Kapp, Tramiel being president and Kapp vice-president and secretary. These shares were eventually transferred to Evermac Office Equipment, as it would appear, on July 8, 1965. The legal work was done by Benjamin H. Oremland and, although his reporting letter addressed to the principals as "Dear Jack and Mannie", dated as late as October 23, 1964, cites the payment of the sum of \$100 by Tramiel and Kapp for the shares issued to them, the interim balance sheet for the period ending December 31, 1964, prepared by Wagman, Fruitman & Lando without audit, shows no funds invested for shares.⁴ A profit and loss statement for the six months ending on that date shows a net profit after taxes of \$20,748.02, made up in the same way as the profit of Trans Commercial Acceptance. After June 30, 1964 Commodore Factors, which was originally getting 12% per annum on its loans to the American subsidiaries and associated companies of Commodore Business Machines, received 8½% from Baronet Associates which continued to charge 12%, except in the case of a loan of A.C.E. Business Machines where the rate was reduced to 8½%.⁵

No satisfactory explanation of this extraordinary arrangement was vouchsafed in evidence by either Tramiel or Morgan. Tramiel said that a reduction in the rate of interest charged by Commodore Sales Acceptance and Commodore Factors had been contemplated for some time before the incorporation of Trans Commercial Acceptance and Baronet Associates, and that Morgan had suggested the creation of these companies, to give "tighter control" and observation of the cost and size of the loans before taking further action. Not only could this have been done, as it was doubtless done in any event, in the books of the lending companies, but the situation of the borrowing companies was not in any way improved by the device adopted. The financial statements of both Trans Commercial Acceptance as at December 31, 1964⁶ and Commodore Business Machines as at June 30, 1964⁷ are silent as to any

⁴Exhibit 706.

⁶Exhibits 2237-8.

⁶Exhibit 298.

⁷Exhibit 356.

obligation to re-adjust interest rates in favour of Commodore Business Machines and its subsidiary companies, and in fact no such adjustment was made, except by Commodore Sales Acceptance and Commodore Factors in favour of Trans Commercial Acceptance and Baronet Associates. Tramiel maintained that he and Kapp were merely nominees of Morgan in both Trans Commercial Acceptance and Baronet Associates, was particularly insistent about Baronet, and could not recall giving any instructions to Oremland about its incorporation. Morgan was equally emphatic to the contrary.⁸

... "In Mr. Tramiel's evidence I believe he also stated that I suggested that Trans Commercial be accepted—accepted or incorporated, and I was a beneficial owner of these shares. This I flatly deny. The same with Baronet Associates, this I flatly deny. These were the brain children of Mr. Tramiel. He was fed up to the teeth of paying the interest to Atlantic.

Again he felt his company shouldn't have to pay 12 per cent, whatever the interest rate was being paid to Commodore Sales Acceptance or Commodore Factors, and he agreed these other companies—and I found out later that he was charging the office the same rate, whereas I had reduced the rate because if it was going to discount in September from 12 per cent to 8½ per cent, so the beneficial difference between 8½ per cent and 12 per cent remained with Baronet or Trans Commercial, and this accrued to the benefit of Mr. Tramiel and Mr. Kapp and nobody else.

Q. Let me see if I understand that. Do you say that Atlantic agreed upon lending the money to Commodore Business Machines at 12 per cent?

A. Yes.

Q. And that Mr. Tramiel arranged that if a second company could be interposed between Atlantic and Commodore Business Machines, the effect would be to reduce the rate from 12 per cent to 8½ per cent, is that so?

A. That's correct.

Q. And that accordingly he set up Trans Commercial Acceptance, he set up Baronet Associates, which borrowed from Atlantic at 8½ per cent, then loaned that money to Commodore Business Machines, is that so?

A. Or Commodore tried to get whatever companies—

Q. One of the companies?

A. One of the associated companies.

Q. The business machines group?

A. That is correct.

⁸Evidence Volume 25, p. 3399.

Q. And do you say that in fact the Commodore Business companies paid the same rate of interest as they had been paying before these companies were incorporated?

A. Exactly.

Q. Why was the interest rate dropped because of the interposition of Trans Commercial or Baronet, neither one of which had any assets?

A. Well, they were supposed to have \$200,000 of equity capital in both instances—both were supposed to have that. And this had been, Mr. Tramiel had told me that this was being subscribed for by German interests and the same with Baronet, by Irish interests, in this particular case. But in any event, I was satisfied with Commodore's stability, that I was happy with 8½ per cent."

One can understand Tramiel's dissatisfaction with the 12% rate, and the characteristic decision that when the rate was lowered he, and not his shareholders, would get the benefit of the reduction. It is less easy to understand Morgan acquiescing in this without sharing in the benefit, but there is no evidence of any direct interest of Morgan's in either Trans Commercial Acceptance or Baronet Associates, other than through his minority position in Associated Canadian Holdings which for a time owned the former. In this conflict of evidence, given by guilty men, I reject that of Tramiel and accept that of Morgan, with the qualification that Morgan at this point was relying on Tramiel to fry other fish for him in Germany, and was not in a position to provoke a breach. As usual, both Morgan and Tramiel had their own private interests firmly in view, and ignored their public responsibilities.

Pearlsound Distributors and Humber Typewriters & Business Equipment

Throughout the preceding pages reference has been made to two companies, Pearlsound Distributors Limited and Humber Typewriters & Business Equipment Limited, with an undertaking to say more about their relationship with Commodore Business Machines. In June 1961 N.G.K. Investments had paid \$50,000 into the treasury of Pearlsound Distributors, receiving in return all the issued common shares to the number of 50,000. Subsequently the minutes of a meeting of the board of directors of N.G.K. Investments, dated September 28, 1962, record ratification of the sale of these shares to Evermac Office Equipment in return for 17,500 common shares of Commodore Business Machines, to which were ascribed a value of \$52,500. The sale had in fact occurred on July 27, 1962, and the shares of Commodore Business Machines with which Evermac made its purchase were part of the block disposed of by C. P. Morgan, Jack Tramiel and Manfred Kapp, under the style of Don Mills. Evermac, as will be recalled, was originally ~~Everest Office Equipment Company Limited~~,* incorporated some three years before Commodore Portable Typewriter Limited on September 21, 1955, and

was the original corporate vehicle used by Tramiel and Kapp in their first enterprise in Toronto. The name was changed by supplementary letters patent to Evermac Office Equipment Company Limited on September 10, 1958, contemporaneously with the creation of Commodore Portable Typewriter Limited. The minute books and shareholders register of Evermac¹ show 1,000 common shares as having been issued, as do the company's returns under the Corporations Information Act, although the financial statements show 2,000 issued shares. In any event, apart from the qualifying shares, the owners of all of these were Jack Tramiel and Manfred Kapp, their wives having held shares in the earlier days. The minutes of meetings of the company's board of directors recorded the purchase of the Pearlsound shares from N.G.K. Investments as being made, on July 27, 1962, in return for 17,500 shares of Commodore Business Machines, but there is no contract in writing apparently in existence in connection with this purchase which was made, according to the financial statement of Pearlsound for the year ended June 30, 1962,² substantially at the book value of its shares. Three days later Pearlsound acquired all the shares of a company known as Humber Typewriters & Business Equipment Limited, and on this occasion an agreement of purchase and sale was apparently executed.³ The agreement provided for A. J. E. Fulford and his wife, who owned all the issued shares of Humber, selling them to Pearlsound for the price of \$105,913.77, of which \$79,433.77 was to be paid in 36 equal monthly instalments of \$2,206.50, and the balance of \$26,480 by the delivery of 10,592 common shares of Commodore Business Machines. The book value of Humber shares, according to the balance sheet annexed to the agreement, was \$57,323, with earnings before taxes of \$10,735.48. After this acquisition Pearlsound sold Humber to its own parent, Evermac, in a transaction which is alleged in the Evermac minute book to have occurred on January 16, 1963, although a letter from Pearlsound to Evermac, dated April 29, 1963,⁴ indicates that the transaction was not completed until April 30, and may not have been contemplated before the spring. It provides for a total consideration of \$111,600, made up of \$52,024.73, payable forthwith, and 27 monthly instalments beginning May 15, 1963 and concluding June 15, 1965, in the same amount of \$2,206.50, Evermac assuming responsibility for the monthly payments to Mr. and Mrs. Fulford and paying in the aggregate some \$5,500 more than Pearlsound had paid for the shares in the previous July. The agreement incorporating the terms of this letter and signed for both Pearlsound and Evermac by Manfred Kapp is, like the minutes,

¹Exhibit 239.

²Exhibit 335.

³Exhibit 334.

⁴Exhibit 2245.

dated January 16, 1963, and the financial statement of Humber Typewriters, as of December 31, 1962,⁵ indicates a net profit before taxes of \$17,277 and capital surplus of \$41,906. Forthwith, if one accepts the tenor of the letter from Pearlsound to Evermac, and after a barely decent interval, if January 16 is to be regarded as the date of the purchase by Pearlsound, Evermac, according to its own records on April 18, sold Humber Typewriters to Commodore Business Machines for the astonishing price of \$175,000, which was paid by the latter cancelling a debt of \$23,000 owed by Evermac, and remitting the balance of \$151,500 on closing. Evermac, which on April 25, 1963 had issued a cheque to Pearlsound for \$52,024.73 to mark the conclusion of its own purchase of Humber Typewriters, received \$151,500 in cash from Commodore Business Machines on April 26 for the same property.⁶ It is not unreasonable to assume that both these transactions are contemporaneous, and that the date of January 16, inserted in the minutes and in the agreement of sale, is an afterthought. In the case of this change of ownership there was also a written agreement, which was again signed for both parties by Manfred Kapp, and Manfred Kapp alone. Thus both transactions, the purchase of Humber Typewriters by Evermac from Pearlsound and its sale by Evermac to Commodore Business Machines for a mark-up of \$62,400, were completed on the same day, and Evermac paid off a debt to Commodore Sales Acceptance in the amount of \$66,387.87, a portion of a debt to John Frame & Co. of \$29,500 incurred by the purchase of 10,000 shares of Commodore Business Machines at \$4.80 a share, and \$2,600 to Humber Typewriters. There is no minute of any meeting of the directors or shareholders of Commodore Business Machines approving of the purchase of Humber Typewriters.

Evermac continued to own Pearlsound until April 9, 1965, when it agreed to sell it to Commodore Business Machines according to a contract signed, as usual, by Manfred Kapp for both parties, at a price of \$70,000, payable by the issue of 7,500 shares of Commodore Business Machines from the treasury. Attached to it is an interim financial statement of March 31, 1965, showing that, as at June 30, 1964, there was capital invested of \$50,000, and a deficit of \$65,093.34 wiping out all of Pearlsound's capital, but a profit of \$28,569.30 in the interim period, leaving a net equity position on March 31, 1965 of approximately \$13,500.⁷

It is difficult to know where to start when commenting on these transactions, and certainly when they were put to Jack Tramiel he was unable to make any sense of them, falling back on his standing justification that what Morgan wanted he and Kapp did, that he was not really sure what Morgan was doing but that, since Commodore Business Machines was helpless without Morgan's goodwill, everything had to be

⁵Exhibit 326.

⁶Exhibit 2247.

⁷Exhibit 337.

done as he directed. He admitted that he and Kapp had been considering the purchase of Humber Typewriters before it was made. He was always looking for retail outlets of which Humber Typewriters had several in Toronto, and he said that Humber had originally been intended for Commodore Business Machines, but the board of directors of that company decided that the purchase should not be completed, because it evidently considered that the purchase of the Willy Feiler plant, then under negotiation, had priority over other ventures, and fully taxed the resources available to Commodore Business Machines at the time. It was characteristic of Tramiel that in this case, as in the later and far more substantial purchase of ~~Willson Stationery & Envelopes~~ Limited, he would not accept a majority decision of the board when it was not in accordance with his own views, and the various changes of ownership which eventually brought Humber Typewriters under the direct ownership of Commodore Business Machines, and which involved purchases of one Tramiel and Kapp company by another with unjustifiable increases in price, were as difficult for him to explain as they were easy at the time to transact. He said that he recollected telling the board of Commodore Business Machines that Humber Typewriters had been bought by Pearlsound in July 1962 for \$106,000, but he could not explain why the purchase by Evermac of Humber Typewriters from Pearlsound for \$111,600, and its sale to Commodore Business Machines for \$175,000, were apparently closed on the same day. Pearlsound, a dealer in radio and gramophone equipment largely imported by another company known as Pro Musica Limited, another heavy borrower from Atlantic companies, had a staff of salesmen operating across Canada and this fact alone, as Tramiel said, made the purchase of the company attractive to him. Why Morgan would lend money to Pearlsound to buy Humber Typewriters, rather than to Commodore Business Machines for the same purpose, he was unable to say. He maintained that he had told the directors of Commodore Business Machines that their company was purchasing Humber Typewriters from Evermac, but was unable to explain why there were two sets of minutes of the meeting of the board of directors dated April 17, 1963, one dealing with the authorization of the purchase of the Willy Feiler concern only, and the other containing material dealing with the purchase of Humber Typewriters from Evermac, and inserted out of place in the minute book. Both of these sets of minutes were apparently complete, and both were signed by Morgan as chairman and Kapp as secretary, but, on being pressed on this subject, Tramiel merely said that the Commission would have to seek assistance from the company's solicitors. Similarly he was unable to explain why the minutes of a meeting of April 7, 1965, recording the attendance of Morgan, Kapp, King, Solomon, Medland, Wagman, Goodfellow, Gregory and himself, and dealing fully with the purchase of Pearlsound by

Commodore Business Machines, were unsigned and were also out of place in the minute book.

The Commission availed itself of the opportunity to seek an explanation from the company's solicitors as to the existence of two apparently complete and executed sets of minutes for the meeting of the board of Commodore Business Machines dated April 17, 1963, and Irwin Singer, who was responsible for drawing the minutes at this period, testified on the subject on March 20, 1967.⁸ He suggested that these were really two copies of the same set of minutes, and that reference to the acquisition of Humber Typewriters in the second copy was accidentally omitted from the first. This did not explain to his satisfaction, or indeed to mine, why both copies should be in the minute book, the second, which contained the Humber material, being inserted in a portion dealing with business in 1965. He said that the statement in all the minutes, that those of the previous meeting had been read and directed to be signed, was just a formality; that this in fact was not done, and that he only sent them in due course to the secretary of the company, when drawn, to have them executed. On this point Kapp had said that, as secretary of the company, he did not circulate the minutes of the previous meeting before a current meeting for the purpose of having them approved, but did send out copies to directors after they had been signed. Singer agreed that, if there was evidence that one of the directors present did not know about the purchase of Humber Typewriters from Evermac by Commodore Business Machines, the existence of these two sets of minutes would be difficult to explain as being wholly inadvertent. Such a director was Aubrey Medland, who recalled clearly being present at the meeting of April 17, 1963, which dealt with the completion of the purchase of Willy Feiler, and was certain that he did not know about the purchase of Humber Typewriters. Medland did recall the acquisition of Pearlsound, and Morgan stating, as a reason for this, that it was owned at the time by Tramiel and Kapp who should be spending all their time on the affairs of Commodore Business Machines and its subsidiary companies. Morgan added that Pearlsound was the only outside interest of Tramiel and Kapp.⁹ Carman King, on the other hand, felt that the board of directors of Commodore Business Machines had approved of the purchase of Humber Typewriters, and that it agreed with the recommendations made by Tramiel and Kapp, supported by Morgan, on this occasion. He could not, however, recall any discussion about any of the directors having an interest in Evermac, although the second set of minutes contains a declaration of interest by Tramiel and Kapp to this effect. King also said that he recalled the transaction of business dealing with the acquisition of a 50% interest by Commodore Business Machines in a

⁸Evidence Volume 106.

⁹Evidence Volume 92.

company called International Typewriters Inc. in the United States, another matter which Medland had not heard about, but did not realize that this 50% interest was in fact being acquired from Jay-Man Distributors Inc., manifestly a Tramiel and Kapp company, and that the discussion during the meeting of the board made no reference to it. The fact that both sets of minutes for the directors' meeting of April 17, 1963 were signed, and both preserved, is difficult to explain on any other grounds than the need to be able to produce both of them on occasion but never at the same time. It is probable that it was not the purchase of Humber Typewriters, as such, which inspired this wretched stratagem, but the fact that it was acquired from Evermac, a company owned by Tramiel and Kapp, which had acquired it from Pearlsound of which Tramiel was president, and that Pearlsound had acquired it, in the first place, at a time when the board of Commodore Business Machines had considered the expenditure unwarranted.

Subsequent History of the Quick Adding Machine Rights

The sale of the rights to distribute the Quick adding machine in North America by Commodore Industries Limited, a Jamaican company, to Commodore Portable Typewriter, in a manner contrived to extinguish the personal liability of Tramiel and Kapp, has already been referred to in connection with the first prospectus of Commodore Business Machines.¹ Manfred Kapp's evidence about this transaction was given at great length, and the following extract describes the first transfer:²

"Q. We were discussing the contract with Typewriter Sundries relating to the Quick Adding Machine rights, and I direct your attention to a minute, the 3rd July, 1961, in this same minute book, Exhibit 322, wherein a contract is authorized to be entered into between Commodore Portable Typewriters and Commodore Industries Limited of Jamaica, which contract is attached to the minutes. And I direct your attention to a reference in that contract, 'Agreement with Typewriter Sundries Company Limited, a company incorporated under the laws of the United Kingdom, dated 15th June, 1961, a copy of which is annexed hereto and marked Schedule A.'

Can you assist me if the agreement referred to is the agreement whereby Typewriter Sundries shifted the North American rights to the Quick Adding Machine to Commodore Industries Limited?

A. Yes, this is the contract.

Q. Do I understand, then, while your discussions with Mr. Markus took place in October, 1960, you have testified that some months elapsed before a formal agreement was entered into; is that correct?

A. Yes, that is correct.

¹pp. 344-6.

²Evidence Volume 88, pp. 12006-10.

Q. Can you state where the agreement is, it is not in fact attached to the minutes?

A. I couldn't help you, sir.

Q. Why was this North American right granted by Typewriter Sundries to Commodore Industries Limited of Jamaica instead of to Commodore Portable Typewriters direct?

A. At the moment I don't recall why the reasoning was to put it in Commodore Industries.

Q. Commodore Industries Limited of Jamaica was owned by yourself and Mr. Tramiel, was it not?

A. That is correct.

Q. Did Commodore Portable Typewriters ultimately pay Commodore Industries Limited for the acquisition of these rights?

A. They took them, Commodore Industries.

Q. Did they pay the \$100,000 to which the contract refers in its provision that Commodore Portable Typewriters may acquire the right to the Quick Adding Machine possessed by Commodore Industries Limited absolutely on the payment of \$100,000?

A. I don't believe there was payment of \$100,000. If I can recollect Commodore Portable Typewriters took over Commodore Industries for the debt existing at the time, which had been acquired by expenditure for the company in Jamaica.

Q. Do I understand that Commodore Industries Limited owed money to Commodore Portable Typewriters, and Commodore Portable Typewriters gave credit to Commodore Industries Limited against that debt in turn for the unfettered acquisition of the Quick Adding Machine right?

A. If you maybe explain to me unfettered?

Q. Without any lien or further right of Commodore Industries Limited to be able to deal with Quick Adding Machine rights?

A. Yes, absolute right.

Q. Absolute right. And approximately when was this done?

A. Some time after that contract. I couldn't tell you offhand when it was done.

Q. My recollection, without taking the time to look at the books, is it was in December, 1961. Does that agree with your recollection?

A. I can look it up, if you wish, and try to find out.

Q. Now, you said Commodore Portable Typewriters took over Commodore Industries Limited. Do you mean they took over the Quick Adding Machine from Commodore Industries Limited?

A. Took over the rights and whatever was there at that particular time.

Q. The assets of Commodore Industries Limited?

A. Yes, the assets, that is correct.

Q. Are you able to assist us further why, when you negotiated this matter with Mr. Markus, you did not cause these rights to be made to Commodore Portable Typewriters, or have you told us everything you can on that point?

A. Well, at the time that the negotiations started—I would like to mention the reason I did go to Paris to look for Mr. Markus when we were aware of the existence of this machine. And Mr. Tramiel had a couple of years before some discussion with Mr. Markus who told him this machine was being created. And during that whole period the company was wholly owned by ourselves.

Q. You mean during this earlier period?

A. During this earlier period up to October of 1960.

Q. Yes?

A. Commodore was owned by Tramiel and Kapp and by our families. And this is probably the reason we decided to take this over ourselves.

Q. Were your fellow directors of Commodore Portable Typewriters aware when they authorized the entering into of this contract in July, 1961, that Commodore Industries Limited was owned by yourself and Mr. Tramiel?

A. I am fairly certain that they were aware. I believe our directors knew what we were doing.

Q. And did they approve of this transaction? I take it obviously they did, it is in the minutes. Is that your answer?

A. That is correct.

Q. Now, Commodore Portable Typewriters now has these rights, what did Commodore Portable Typewriters do with them?

A. Commodore Portable Typewriter imported the machines, bought machines and sold the machines in North America."

It will be recalled that the amount of the debt owed by Commodore Industries to Commodore Portable Typewriter, of which the travelling expenses of Jack Tramiel was an ingredient, was \$92,098.³ It may also be noted that the only corroboration of the statement that the rights to sell the Quick adding machine were originally acquired by Commodore Industries, and not by Commodore Portable Typewriter, would be the missing agreement between the former and Typewriter Sundries, referred to in the minutes of July 3, 1961.

Counsel then put to the witness a contract, dated May 10, 1963,⁴ by which Commodore Business Machines Inc., the New York State subsidiary, purported to sell to a company called A.C.E. Business Machines Inc. certain assets for \$410,000. These were said to be described in Schedule "A" annexed, but this part of the partially executed document

³Exhibit 346.

⁴Exhibit 916.2.

is missing; Kapp said that the assets consisted of the rights to manufacture the Quick adding machine and certain tools and parts. He was not able to explain how Commodore Business Machines Inc. acquired the manufacturing rights which had not been conferred on its Canadian parent, other than to make vague references to an oral agreement with Markus in England. Little is known about A.C.E. Business Machines Inc., except that it was not a subsidiary of Commodore Business Machines but was apparently owned by Thomas McGourty, an employee of that company. Commodore Factors lent A.C.E. \$410,000 in June of 1963, evidently for the purpose of making this purchase. The loan bore interest at 12% per annum and it was afterwards, on June 30, 1964, transferred to Baronet Associates, which thereafter charged A.C.E. only 8½%. At the time Commodore Factors made the loan to A.C.E. it charged that company with \$410,000 and credited Commodore Business Machines Inc. with the same amount, by journal entry in its own books. A further reference must be made to the outcome of this transaction.

There were then two documents missing which are vital to these transactions: the agreement which was referred to in the minutes of Commodore Business Machines between Typewriter Sundries and Commodore Industries Limited, the Jamaican company, and Schedule A of the agreement, dated May 10, 1963, effecting the sale to A.C.E. Business Machines Inc. of certain assets for \$410,000, in which those assets, if they existed, must have been described. It is very likely that the former document does not exist, and that if the latter does it would reveal assets for which the price of \$410,000 was manifestly absurd. Indeed, this transaction between the American subsidiary of Commodore Business Machines and McGourty's company was apparently arranged for the edification of the Irish government, which required an investment of £150,000 in any company which sought to qualify for the benefits of the Shannon Free Port Development, repayable only out of profits. Had this sale been of substance and in good faith, one might have expected to see it reflected in the consolidated financial statements of Commodore Business Machines for the year ended June 30, 1963 as a non-recurring item of sales, but this is not the case. Nearly a year later, on April 2, 1964, these highly intangible and inflated assets, including, according to Kapp, the right to manufacture and sell the Quick adding machine in Ireland and perhaps the British Commonwealth, were sold for a total of \$435,000 to ACE Industries Limited, an Irish subsidiary of Commodore Business Machines which had been incorporated on December 18, 1963, and the name of which was changed on July 27, 1964 to Commodore Industries Limited.⁵ Again no money changed hands.

Counsel next returned to the affairs of the Jamaican company, and put to the witness a journal entry in the general journal of Commodore

⁵Exhibit 916.

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Business Machines,⁶ made as at June 30, 1963, recording the transfer of an indebtedness to Commodore Business Machines by Commodore Industries Limited of Jamaica—specifically “C.I.L. Jam. to C.B.M. Canada Limited”—in the amount of \$92,187.32 to the Willy Feiler company in Germany. The journal entry concludes “Willy Feiler GmbH has purchased the rights held by C.I.L. for an amount equivalent to C.I.L. complete indebtedness for the purpose of being able to comped (*sic*) in the Canadian and American markets with its parent company C.B.M. Mr. Kapp has stated that such purchase agreement has been confirmed by meetings of the board of directors in West Germany”. Kapp was now confronted with a dilemma.⁷

“Q. Now, when Willy Feiler paid pursuant to that journal entry, by an assumption of debt the sum of \$92,000 for the rights from Commodore Industries Limited, what rights did it acquire?

A. Well, it would appear here to look—I don’t know exactly—remember the details—that the rights from Jamaica went over to C.I.L. and which is, C.I.L. being in this case, Commodore Industries Limited.

Q. I suggest not, Mr. Kapp. Is it not correct that (a) Commodore Industries Limited, that is to say the Irish company as it ultimately became, had not been incorporated, and the reference is to C.I.L. Jamaica, written ‘C.I.L. Jam.’ Is that not correct?

A. Yes. It says Jamaica.

Q. Yes. What rights did Commodore Industries Limited (Jamaica) have in June, 1963, which they conveyed to Willy Feiler for \$92,000?

A. I don’t know. I suppose this must be all part of the original rights.

Q. But the original rights, I thought, Mr. Kapp, we had agreed, were conveyed to Commodore Portable Typewriters and paid for by Commodore Portable Typewriters.

A. Yes. By forgiveness of the indebtedness. Apparently when we look at the entry over here (indicating) it appears that eventually Willy Feiler took over and settled the debt. That is the same debt, that appears to be the same debt. I can only—looking at the entry to refresh my memory—because it does say here (indicating) a credit to advances to Jamaica.

Q. Yes. Would it not appear—go ahead.

A. As I stated before, Commodore Portable Typewriter took over by wiping out the debt from Jamaica, and this is probably the entry that then took place to wipe out this debt.

Q. I thought that your earlier testimony was that, Mr. Kapp, to the effect that, Commodore Portable Typewriter acquired all the rights which Commodore Industries Limited (Jamaica) had and paid for them by forgiveness of debt. So that Commodore Industries Limited thereafter had no rights.

⁶Exhibit 2131.

⁷Evidence Volume 88, pp. 12027-9.

Now, it appears by a journal entry, that on 30th June, 1963, Willy Feiler assumed \$92,000 worth of debt of Commodore Industries Limited in exchange for rights which Commodore Industries Limited does not appear to have. Can you clear up this confusion for me?

A. Well, it is probably the same debt that hadn't been wiped out. I did say that the company ceased operation to my recollection in early 1961.

Q. Yes.

A. I also said that Commodore absorbed by wiping out the debt. Well then, this is the debt, but apparently went for some reason to Willy Feiler, who also at the time was a wholly-owned subsidiary."

Then the witness was shown a journal entry of December 31, 1961 which Commodore Portable Typewriter recorded as follows: "To record purchase of patent rights, franchises, etc. from Commodore Industries Limited (C.I.L.) Jamaica as per agreement. Included in the above deal are all the original intangible assets and plans and processes together with franchises on the sale of adding machines for which Jamaica has recently received the contract." The value of these rights, which cannot, in view of the express terms of the journal entry, be judged to exclude rights to the Quick adding machine, was stated to be \$147,000. The financial statement of Commodore Business Machines, as at June 30, 1962,⁸ none the less recorded the fact that Commodore Industries Limited owed Commodore Business Machines the sum of \$92,098, and it is for this amount, plus a few dollars, assumed by Willy Feiler, that the rights to the Quick adding machine were again disposed of in June 1963 by the same transferor. Kapp's only explanation of the fact that these rights had now been sold at least twice, and perhaps three times, was to speculate that they must have been excluded from the first purchase in December 1961. He was quite unable to explain why Willy Feiler, by that time a wholly-owned subsidiary of Commodore Business Machines, should need to acquire rights which had originated with it, and had been previously acquired by its parent. The third and fourth transfer of rights to the Quick adding machine, the effect of the transfer of additional assets the record of which has mysteriously disappeared, and the relationship between Commodore Business Machines and the Irish Government were put by counsel to the witness as follows:⁹

"Q. Let me put it to you this way. I suggest that Commodore Business Machines Incorporated in May, 1962, (*sic for 1963*) recorded the sale of certain assets to A.C.E. Business Machines for \$410,000. You have told us that these assets consisted in tools and parts, and also the fruit of an oral arrangement made with Mr. Markus relating to the manufacture and distribution of the Quick Adding Machine. Is that correct?

A. Yes.

⁸Exhibit 174.

⁹Evidence Volume 88, pp. 12036-9.

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Q. A.C.E. Business Machines then, of course, owed \$410,000 to Commodore Business Machines Incorporated, is that correct?

A. Correct.

Q. A.C.E. Business Machines in the following year sold the same rights under this oral arrangement, plus some machines and parts, to ACE Industries (Ireland) for the same \$410,000 plus the interest that had accrued thereon?

A. And expenses.

Q. Yes, and the effect of that was that ACE Industries (Ireland) now owed Commodore Business Machines Incorporated \$410,000, plus the interest thereon, is that correct?

A. Correct.

Q. Then I suggest to you that Commodore Business Machines (Canada) Limited recorded an investment of an aggregate of \$410,000, plus the interest, in ACE Industries Limited of Ireland and forgave the indebtedness of the Irish company, is that correct?

A. Essentially that is correct.

Q. And in order to obtain certain rights to which Mr. Tramiel referred, from the Irish Government, Commodore Business Machines (Canada) Limited was required to invest in its Irish subsidiary 100,000 pounds by way of invested capital and 54,762 pounds which could be by way of a loan, without pinning you down to the precise number of pounds. Is that correct?

A. Well, no, the \$100,000—100,000 pounds, pardon me, had to be invested.

Q. Yes?

A. The differential of the loan was to bring it up to the figure you had referred to, \$410,000, plus, which Ireland had to pay. Consequently the investment of Commodore—

Q. When you say Ireland, the Irish subsidiary?

A. Irish subsidiary had to pay back in order to come back to Commodore.

Q. This was the method whereby Commodore Business Machines (Canada) Limited got its investment of \$435,000 (in round figures) in the Irish subsidiary, is that correct?

A. Correct.

Q. One additional advantage, I put to you, of this series of transactions is that when Commodore Business Machines Incorporated in May, 1962, sold to A.C.E. Business Machines whatever rights it had acquired as a result of the oral agreement with Mr. Markus, it received \$410,000 which, of course, increased the sales and therefore the profit of Commodore Business Machines (Canada) on a consolidated basis?

A. Probably."

The purpose of the two sales by the Jamaican company of the same rights, the second occurring long after it had ceased to do business, and the assumption by the Willy Feiler subsidiary of the Jamaican company's debt of slightly over \$92,000 to Willy Feiler's parent company, was not revealed by Kapp's attempts to explain them, but that it was improper there can be little doubt. There is likewise little doubt that the company's favourite device of including in the records of their sales non-recurring items without explanation was here successfully applied. That the Irish government, which conferred valuable exemptions from duty on Commodore Business Machines' Irish subsidiary, was under a misapprehension as to the amount and nature of the parent company's investment, may be putting it too mildly. After the transfer of its loan owed by A.C.E. Business Machines to Baronet Associates on June 30, 1964, Commodore Factors paid \$435,000 to Commodore Business Machines Inc., which put the account back into a debit position for the first time since the latter had been credited with \$410,000 the year before. Commodore Business Machines Inc. thereupon paid the \$435,000 to Commodore Business Machines (Canada) Limited, which deposited it with Commodore Factors as a "special account" and received 8½% per annum on the money; then it set up the investment in the Irish subsidiary by crediting Baronet Associates with the same amount, and Baronet in turn credited A.C.E. Business Machines, to extinguish its debt and complete payment for the latter's sale to the Irish company.

* * * *

Analogue Controls Incorporated

One company, subsidiary to Commodore Business Machines, although never wholly-owned, and disposed of some nine months before the collapse of Atlantic Acceptance, must be the subject of examination in detail, because its affairs played an important part in the history of Commodore Business Machines and its relationship with Atlantic Acceptance, and provided Morgan with the means to make his most carefully planned and successful coup in the stock market, in which he again sought the assistance of Frank Kaftel and the shelter of the Bahama Islands.

Analogue Controls Inc. was incorporated in the State of New York on November 8, 1954 for the purpose of manufacturing electronic equipment, particularly switches and a type of voltage measuring device called a potentiometer, for which it was awarded in due course a contract from the government of the United States of America. Its manufacturing facilities were at Hicksville, N.Y. on Long Island, and it was in the unusual position of having shares listed for trading on the Toronto Stock Exchange, and on that exchange only. The books and records of the company, now bankrupt, were, when examined by Mr. Gillman, in the

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hands of its trustee and of law enforcement authorities of the State of New York, and have never been in the custody of this Commission. Had it been otherwise, many details of a formal and historical nature would have been readily available but, as it is, the early history of the company must be considered only in passing. The link with Atlantic Acceptance was again the knowledgeable and ubiquitous Carman G. King, who in 1956 was with Gairdner & Co. in New York, and to him came L. Sanford Reis with a proposal for the public financing of Analogue Controls. Gairdner & Co. underwrote the first public issue of its securities, and secured a listing of its common shares on the Toronto Stock Exchange which were first called for trading on May 31, 1957. This was accomplished, according to King, after the company had exhibited twelve months of modest profits in the manufacture of potentiometers, and thereafter its record was not notably successful. King's friend and customer, Alan Christie, was an early subscriber, and in due course Wilfrid P. Gregory and British Mortgage & Trust Company took shares.¹

Although Mr. Gillman was able to inspect the books of account of Analogue Controls, the company's trustee in bankruptcy refused him access to its other corporate records. An inspection of the minute books was, however, carried out by the United States Securities and Exchange Commission, and from the information supplied it would appear that Reis and his associates were the early promoters, one Karl Birken was the president and operating head, and King was an early director. Trouble started, according to King, when Birken was succeeded as president by E. J. Garrett who involved his company in the manufacture of gas bearings, a business in which a small concern like Analogue could not successfully compete with the large manufacturers. In 1958 King joined Annett & Co., and in 1960 this firm was responsible for an additional underwriting. By 1961 there were 413,280 common shares issued out of a total of 700,000 authorized, on which no dividends had been paid and very little earned, and 713 preference shares out of 1,000 authorized at a par value of \$1 per share.

At the end of Analogue's fiscal year on October 31, 1961, the directors of the company were L. Sanford Reis, who was chairman of the board, Fenimore Fisher, who had replaced Garrett in charge of operations, Karl Leubsdorf, Karl Birken, Thomas B. Flynn and Carman G. King, the last being the only Canadian director. Of these, by the end of the same period in 1962, only Fisher and King remained, the former having become president of the company, and the new directors were C. P. Morgan, who became chairman of the board, Jack Tramiel and Manfred Kapp. This change was a result of the purchase by Commodore Business Machines Inc. of 202,500 shares of Analogue Controls in the course of the year, and occurred shortly after the first public issue of the

¹Evidence Volume 46.

shares of the purchaser's parent company on the Canadian Stock Exchange. It coincided with a determined effort on the part of Annett & Co., and particularly Carman King, to dispose of Analogue Controls in such a manner as to salvage something of consequence for the many customers of the firm who had been induced to purchase its shares. These sold as high as \$10 per share in 1959, but for the month of July, 1962 traded at a high of \$1.50 and a low of \$1.30 per share. King testified that he and his associates had been looking for a purchaser at a level of \$1.30 per share. At the time Commodore Business Machines was importing and selling a copying machine from West Germany, and finding duty and shipping costs so high, and the necessity of making voltage adjustments for the North American market so expensive, the board of directors was amenable to a suggestion by Tramiel that the company could manufacture the machine itself. The lack of staff and production knowledge were stumbling blocks until King suggested that Analogue Controls would be interested in manufacturing the machine; whereupon Tramiel called upon Fisher, surveyed the plant at Hicksville, and at the next meeting of the board of Commodore Business Machines suggested ordering 10,000 of the German machines for adjustment, at least, by the Analogue staff. Upon King's recommendation that Commodore Business Machines should have an interest in Analogue, it was decided to buy control of the company. Needless to say, the part played by King in Tramiel's evidence appears to be much more active than in that of King himself, but there is no doubt that King was anxious to secure a buyer for the Analogue shares, and his position on the board of Commodore Business Machines provided a favourable opportunity under circumstances which appeared to confer a benefit upon both parties.

Analogue Controls, at the time when this purchase was made, was no bargain. In 1960 it had shown a loss on operations of \$454,328, in 1961 of \$13,738. Although at the year ended October 31, 1962 its financial statements exhibited a net profit of \$4,976, it was in a deficit position of \$470,772.07, and this situation prevailed in the two following years during which Commodore Business Machines had control of the company by virtue of its holdings in common stock.² The shareholders of Analogue were, according to King, discouraged by the performance of the company and of its shares on the exchange. Annett & Co. concentrated on its own customers, and they, with others, were the principal beneficiaries, as will be seen, of the complicated transaction which then ensued.

Commodore Business Machines Inc. Acquires Shares in 1962

On August 24, 1962 Commodore Business Machines Inc. of New York bought 181,200 shares of Analogue Controls, at \$1.20 per share, through Annett Partners Limited for a total price of \$221,970. Payment

²Exhibits 2378-81 and Table 44 (Exhibit 2384).

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was not made for this purchase until October 12, and then by a cheque from Commodore Business Machines (Canada) Limited.¹ A handwritten list, taken from the files of Annett Partners Limited,² shows the names of the individual vendors of these shares, among which are the Bank of Nova Scotia which sold 81,900 shares on behalf of customers in New York, the Bank of Montreal in two accounts which disposed of 5,000 shares, Carman G. King 825 shares, James E. McConnell 18,900, British Mortgage & Trust Company 12,000, Alan Christie 22,400, his wife, 3,850, his daughter 2,000 and W. P. Gregory 2,100. On September 7, 500 shares were bought at \$1.75 per share for a total of \$887.50 and 20,800 shares at \$1.80 for \$37,960. The money required to pay for the 181,200 shares and the 20,800 shares was received by Commodore Business Machines in two cheques from Aurora Leasing Corporation, one dated September 14 for \$37,960 and the other dated October 12 for \$224,402.50, the shares being lodged with Aurora as security.³ Aurora obtained most of the money which it lent from British Mortgage & Trust Company, from which it borrowed \$250,000, the managing director of the trust company writing to the chairman of the board of Commodore Business Machines in the following terms on January 3, 1963:⁴

"Dear Powell:

I am enclosing herewith our cheque for \$250,000 representing a three month loan at 7% to Aurora. This loan is to be secured by a 125% collateral to be placed in the hands of Carl Solomon as Trustee for us.

Very best regards for the new year.

Yours sincerely,
Wilf"

Aurora charged Commodore Business Machines 10%, and the only security pledged with Carl Solomon by the latter was Commodore Business Machines' note to Aurora for \$224,402.50 in respect of the 181,200 share purchase, which was neither 125% of the amount lent nor, as it happened, a constant security, since it diminished as the note was paid off. It is sufficient to note Gregory stated in evidence that he would have preferred to have another trust company as trustee, but that he acceded to Morgan's suggestion that Solomon should act.⁵ This assertion must be weighed against the apparent advantage of having a trustee who could be relied upon to do what he was told, without questioning the motives of either Morgan or Gregory, and who was familiar with the situation of Aurora and Commodore Business Machines. None of the shares of Analogue Controls were lodged as security with British Mortgage & Trust or

¹Exhibit 2385.

²Exhibit 2387.

³Exhibits 2388 and 2390.

⁴Exhibit 2393.

⁵Evidence Volume 116.

with Solomon, in spite of the deficiency of the Commodore Business Machines note with respect to even 100% of the loan, but were kept in a safety deposit box at the Guaranty Trust Company of Canada for the benefit of Aurora.⁶

The 20,800 shares of Analogue Controls sold to Commodore Business Machines Inc. at \$1.80 per share through Annett Partners on September 7 came from Valley Farm and Enterprises Limited and, according to its books,⁷ are shown as having been purchased on September 30 at a price of \$1.50 per share for \$31,200, the vendor being identified as Aurora Leasing Corporation. Aurora's books⁸ record the purchase of the same number of Analogue shares from Maris Investments Limited, a holding company for Earl A. Glick, at the same price on August 24, payment being credited against an outstanding loan from Maris to Aurora. Its account at Annett Partners Limited recorded the sale by Valley Farm on September 7, at a price after brokerage of \$36,868 at \$1.80 per share, creating a profit for Valley Farm of \$5,668 in cash. The same records show that the vendors of the block of 181,200 shares received cash on October 12 in the amount of \$221,970, and on October 15 recorded a payment of \$212,272.16 to Valley Farm shown as a credit balance in its account. The realities of this transaction are disclosed by the same account showing that Valley Farm delivered 72,480 shares of Commodore Business Machines on August 27, which were in fact exchanged for the 181,200 shares of Analogue Controls assembled by Annett Partners, giving a value to the shares of Commodore Business Machines of \$3 per share, and of Analogue Controls of \$1.20 per share, an exchange ratio of one share of the former to two-and-a-half shares of the latter. The shares supplied by Valley Farm were a part of 200,000 purchased from Dallas Holdings on July 16 in the course of the Barrett, Goodfellow & Co. underwriting. For these it paid \$2.35 per share or \$175,328 for the shares delivered to Annett Partners, making a profit of \$41,944.16, and a total profit in respect of these and of the 20,800 shares of Analogue Controls of \$47,612.16.

Valley Farm and Enterprises paid for the shares purchased from Dallas Holdings by assuming a debt of the latter owed to Aurora Leasing. On October 1 it, in its turn, borrowed \$125,000 from Aurora, and on October 29 borrowed a further \$250,000 from Adelaide Acceptance. With these sums and its credit balance at Annett Partners it disposed of upwards of \$587,000 and paid out \$549,000, some to brokerage accounts, lent C. P. Morgan \$75,000 with which to purchase shares of Arcan Corporation Limited and bought from him, through Jenkin, Evans & Co., a debenture of Phantom Industries Limited for \$127,761.88. This

⁶For a fuller account of the Solomon trusteeship and the security pledged see Chapter XV, under the sub-heading "'Secured Notes' of Aurora Leasing: Carl Solomon as Trustee."

⁷Exhibit 1259.

⁸Exhibit 929.

last acquisition was, in due course, simply charged off to expense, much as if it were a payment for municipal taxes, and must constitute one of the more barefaced accounting irregularities committed by the Trio, among their many high-handed and dishonest activities. Finally, on October 26, \$25,000 of these funds were paid into the Toronto-Dominion Bank to the credit of "Directors' Loans". Nothing was ever repaid to Aurora Leasing, and nothing at this time to Adelaide Acceptance. Thus, on the acquisition of a commanding, if not yet a controlling interest in Analogue Controls by Commodore Business Machines, which treated the purchase price as having been lent to its subsidiary Commodore Business Machines Inc. and forgave the loan for the shares, Aurora supplied all of the money used, having borrowed it, and slightly more, on more advantageous terms from British Mortgage & Trust Company which took less security than Aurora held; Valley Farm and Enterprises received all the cash, and laid off to members of the public a large number of the Commodore Business Machines shares which it had acquired in the so-called public underwriting of July 1962; vendors of 181,200 shares of Analogue Controls got Commodore Business Machines shares at a rate of one for two and a half supplied, and C. P. Morgan personally profited from using money in Valley Farm to buy his interest in Arcan Corporation, and to dispose of the Phantom Industries debenture.

Jack Tramiel maintained in his evidence that he did not know about the exchange of shares, and the fact that the Analogue Controls shareholders had not been paid cash by Commodore Business Machines, and had only learned about it through Sanford Reis, then chairman of the Analogue board, who told him that he had built a "Commodore" house in Florida out of the profit made on Commodore Business Machines shares. He did not remember receiving any communication from Annett & Co., but recalled buying his Analogue stock at \$1.80 per share. When Carman King testified,⁹ in June 1966, he was inclined to feel that Tramiel may not have known this, and consequently had no opportunity to consider the alternative of issuing treasury stock. On reflection, when he testified in December of the same year,¹⁰ he felt that Tramiel must have known, since he recollected discussions between Tramiel, Morgan and himself, that Gregory must also have known about the transactions, since he exchanged his own shares of Analogue, and that perhaps all the members of the Commodore Business Machines board, except Medland, knew exactly what was afoot. However that may be, there was no record of an exchange of shares having been discussed at any meeting of the board of Commodore Business Machines; indeed King said that it was not discussed other than privately. King had been having difficulty in persuading the Analogue shareholders with whom he had made contact, particularly the New York group headed by Reis, to sell at \$1.20

⁹Evidence Volume 46.

¹⁰Evidence Volume 93.

per share, and it was at Morgan's suggestion, according to him, that the opportunity was given of sharing the fortunes of Commodore Business Machines which proved more attractive. The whole idea, when looked at with all its ramifications, is so typical of Morgan's unconscionable inventiveness, it could hardly have originated with anybody else. Tramiel may be given credit on this occasion for having his company's manufacturing problems principally in mind.

The Purchase of Control by Commodore Business Machines (Canada) Limited in 1963

A further acquisition of the shares of Analogue Controls was made by Commodore Business Machines (Canada) Limited in 1963, involving 130,000 shares of its treasury stock which were purchased for 80¢ apiece. This was financed in part by a loan of \$50,000 U.S. funds given by the Franklin National Bank of Franklin Square, Long Island, N.Y. at 6% per annum, to be repaid at a rate of \$10,000 per month, and for which 130,000 marketable shares of Analogue were to be pledged. To make an issue of treasury shares in the United States would have required delivery of a prospectus, unless the purchaser bound itself to keep the shares for investment only. The Franklin National Bank was apparently not aware of the fact that, once the Ontario Securities Commission had waived the requirement of a prospectus and the Toronto Stock Exchange had agreed to the transaction, the shares were immediately marketable here. Such an application was in fact successfully made¹ on October 29, 1963, and the Toronto Stock Exchange approved. In any event, Oremland had written to the Toronto Stock Exchange on October 28, assuring it that the sale by Analogue Controls of these shares to Commodore Business Machines was required to raise additional permanent capital. The additional purchase was made by the latter "for investment purposes only"² and Carman King had advised William B. Lewis, Jr., president of the Franklin National Bank, on October 24, that Commodore Business Machines was prepared to pledge with the bank 130,000 shares "which they had purchased on the open market and which therefore would have no investment conditions attached".³ The problem was resolved, with characteristic regard for the security of Atlantic and British Mortgage loans, by taking 130,000 of the 202,000 shares in the safety deposit box at Aurora Leasing for which was substituted a receipt dated January 10, 1964 signed by Tramiel.⁴ A box count taken on January 15, 1964 contained the observation that Aurora had 75,000 shares of Analogue Controls, and that 130,000 had been taken from the box by

¹Exhibit 2395.

²Exhibit 2398.

³Exhibit 2394.

⁴Exhibit 2400.

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Harry Wagman and turned over to Tramiel at the request of C. P. Morgan on January 10. Commodore Business Machines did not pay the required \$104,000 to Analogue for these shares until February 28,⁵ and only then was able to restore 130,000 shares to the Aurora box. By June 30, when Baronet Associates assumed the debt of Analogue Controls to Commodore Factors, it amounted to \$774,639.14 in U.S. funds on which Analogue continued to pay 12% to Baronet Associates, which thereafter paid 8½ % by way of interest to Commodore Factors.

This sale of 130,000 shares of its treasury stock was made by Analogue Controls pursuant to a resolution of its directors, taken as early as August 20, 1963 at a meeting held in the offices of Solomon & Singer in Toronto, granting an option on all the unissued shares left in the treasury to Commodore Business Machines at 80¢ per share, "in consideration of past and continuing financial support to the corporation by Commodore Business Machines". At the same meeting C. P. Morgan was reported to have advised the board to sell the business of making potentiometers, and develop for the future that of making copying machines.⁶ It may accordingly be concluded that Tramiel's expression of dissatisfaction with the operations of Analogue, recorded in the Commodore Business Machines' minutes of May 27, 1964, represented long-standing doubts about the value of the company's investment. At the same meeting Tramiel, as president, was authorized to continue attempts to borrow \$450,000 and to sell Analogue's potentiometer business. The first indication that something indeed was being attempted appears in the minutes of a directors' meeting of Commodore Business Machines, dated August 4, at which the company gave an option to Ross & Co. (Bahamas) to buy its Analogue shares at \$1.35 per share, open until October 15. Ross & Co. were a firm of stockbrokers in Nassau, presided over by one Leon Irving Ross, who had Canadian connections, and who was subsequently expelled from the islands by official action.⁷ This, according to King's recollection of the meeting, was done at Morgan's suggestion, and he apparently added that he had seen an advertisement in the *Toronto Globe and Mail*, indicating interest on the part of somebody requiring a company with shares listed on a stock exchange and with an operating plant, and he had, according to King, answered this advertisement. Morgan was no longer chairman of the board of Analogue Controls, having been replaced by Tramiel, who was an American citizen, on February 5, 1964, apparently as a result of misgivings by security officials of the United States Air Force to which the company was under contract for potentiometers. Morgan ceased to be a director on March 1, not being re-elected at the annual meeting of shareholders of that date. Nothing more was

⁵Exhibit 2402.

⁶Commission file: Securities and Exchange Commission—memorandum of Peter J. Adolph, March 10, 1966.

⁷Exhibit 2477.

heard of the Ross option which, according to Ross himself, was secured for Mutual Bank & Trust Company, a Bahamian "front" for Elias Y. Rabbiah.

Commodore Business Machines Sale to Mortgage Trust & Savings Corporation (Bahamas) Limited

The next thing heard by King was that Commodore Business Machines' interest in Analogue Controls, amounting to 332,000 shares, had been sold at a price of \$1.45 per share. Morgan did not disclose the name of the purchaser to King, but said they were good people who had big ideas for Analogue. Tramiel claimed that he knew nothing about this transaction either, except the price per share, and that he had been in Germany when all the discussions had occurred and decisions been made at the Commodore Business Machines board. He specifically denied being at the meeting of August 4, the minutes of which record the attendance of himself, Morgan, Kapp, Solomon, Wagman, King, Medland and Goodfellow. It is difficult to believe that any one as closely associated with Morgan as Tramiel was fobbed off without any information at all, but if he did get any, it was no doubt intended to mislead him. Tramiel qualified his evidence at this point by saying that, when he was next in Toronto, Morgan told him that the buyer of the Analogue shares wanted all of them, not simply those held by Commodore Business Machines, and reminded him that there were three or four thousand of Tramiel's personal shares that should be turned over. On this occasion Morgan said that the company was going into the pharmaceutical business, at which Tramiel said he would keep his shares, and Morgan suggested that he should stay on as a director. Medland was apparently as much in the dark about the disposal by Commodore Business Machines of its Analogue shares as he had been about their acquisition. True to his custom, however, he had visited the Analogue plant while Commodore Business Machines retained its interest, but had not been impressed by its manufacturing facilities, as he had been in the case of Willy Feiler and Commodore Industries in Shannon.

One director, without doubt, knew the whole story, which is now to be told, and that was Rennie Goodfellow. His instructions were exemplified in two confirmations from Barrett, Goodfellow & Co., dated September 14, 1964¹ dealing with the sale of 332,000 shares of Analogue Controls by Commodore Business Machines for a total price of \$481,400, or \$1.45 per share, with a commission of \$4,150 and transfer tax of \$830. On the same day C. P. Morgan wrote to Barrett, Goodfellow & Co., as chairman of the board, authorizing them to withhold payment to Commodore Business Machines until the purchaser had remitted the necessary funds.² On October 5 Barrett, Goodfellow & Co. drew a cheque in

¹Exhibits 2403-4.

²Exhibit 2405.

favour of Commodore Business Machines for \$243,950, apparently relating to the sale of 170,000 shares, and Commodore Business Machines on the same day drew one in favour of Aurora Leasing Corporation for \$264,799.85³ to retire its loan. Also on the same day, Aurora Leasing drew a cheque for \$250,000 to Barrett, Goodfellow & Co.⁴ marked "Chgd to Mtge. Trust." This brings on to the stage a company called Mortgage Trust & Savings Corporation (Bahamas) Limited, incorporated in the Bahama islands on January 10, 1964,⁵ all of the shares of which Morgan acknowledged to be beneficially owned by him. This, then, was the purchaser for which Morgan had, as chairman of the board of the vendor, directed Barrett, Goodfellow & Co. to withhold payment, and this company of Morgan's now stood in the place of Commodore Business Machines as Aurora's debtor, to which it gave a demand note with interest at 9% and 75,000 shares of Analogue Controls as security, instead of the 202,000 previously lodged by Commodore Business Machines, the covenant of which, and the assets standing behind it, were lost to the lender. On October 19 Barrett, Goodfellow & Co. paid Commodore Business Machines by cheque \$192,470, and on the following day the balance of \$40,000 in respect of the remaining 162,000 shares. These funds, a part of \$300,000 supplied to them by Commodore Factors by cheque, dated October 19, signed by Morgan and Woolfrey and payable to the Bank of Nova Scotia,⁶ were identified by a credit voucher of Barrett, Goodfellow & Co.⁷ addressed to Mortgage Trust & Savings of the same date.

The investment of Commodore Business Machines in 332,000 shares of Analogue Controls was made at a cost of \$347,998.13, and its sale on September 14 to Mortgage Trust & Savings produced \$476,421, yielding a profit of \$63,887.66, after taking into account the \$64,535.21 paid as interest to Aurora Leasing over the two years of its ownership in respect of the loan of \$250,000 to enable the purchase to be made. The Aurora loan, of course, applied only to the acquisition of 202,000 shares. As for the 130,000 shares for which Commodore Business Machines paid 80¢ per share, the \$95,680 in U.S. funds which was paid to Analogue Controls was immediately paid out again, according to the books of the latter company, in two amounts; one of \$40,486.03 to Commodore Business Machines Inc. in reduction of a loan payable, and the other of \$55,193.97 to Commodore Drycopy Inc., which was treated as being an amount receivable from that company. Consequently Commodore Business Machines acquired the 130,000 shares by, in part, accepting them in payment of moneys which its subsidiary company had lent to Analogue Controls, and, in part, by receiving money back from Analogue as a loan to another subsidiary company.

³Exhibits 2406-7.

⁴Exhibit 2408.

⁵Exhibit 2409.

⁶Exhibit 2412.

⁷Exhibit 2411.

Mortgage Trust & Savings Lays Off 75,000 Analogue Shares to Manhattan Sound Corporation

Commodore Factors treated the payment of \$300,000 to Barrett, Goodfellow & Co. as a special note receivable from Manhattan Sound Corporation, for which the latter provided a promissory note,¹ signed by Fred B. Adair, in the amount of \$279,181 U.S. funds. The board of directors of Manhattan Sound, according to its minutes,² apparently met on November 5 in full strength, consisting of Fred B. Adair, Gustav Mortensen, Benjamin H. Oremland, Donald W. Reid and Fannie Cooper, the last named being a member of Oremland's firm. Adair announced that the company had bought 75,000 shares of Analogue Controls at \$4 per share for \$279,181, borrowing this amount from Commodore Factors with interest at 9%, and pledging shares with Commodore Factors as collateral, whereupon his actions were ratified. This transaction, and the purchase of the 332,000 shares were both off the exchange. Of the 200 issued and authorized shares of Manhattan Sound, Mildred Morgan held 30 and Donald Reid 50, of which 25 were beneficially owned by C. P. Morgan.³

Manhattan Sound Corporation's 75,000 shares of Analogue Controls were pledged and delivered to Commodore Factors on December 9, 1964, and by January 18, 1965 the loan had reached the sum of \$332,245.95. Manhattan Sound on that day gave Motion Picture Security Corporation, described by Adair as "a little finance company that takes paper on my commercial investments", a note for this amount to Commodore Factors which, by journal entry, treated Manhattan Sound's loan as having been paid, opened a new account for Motion Picture Security and lowered the interest rate from 9% to 8½% after capitalizing the interest due, thus giving the latter company a one-half per cent "spread", and dispensing with the comparatively substantial covenant of Manhattan Sound. Mildred L. Morgan owned 40% of the issued stock of Motion Picture Security.

The Cost to Mortgage Trust & Savings of its Purchase of Analogue Shares

A summary of these complicated transactions, by which C. P. Morgan, in the character of Mortgage Trust & Savings Corporation (Bahamas) Limited, acquired the interest of Commodore Business Machines in Analogue Controls, can now be attempted. In September 1964 Commodore Business Machines owned 332,000 shares of Analogue Controls, and sold them at a price of \$1.45 a share to Mortgage Trust & Savings through Barrett, Goodfellow & Co. Payment was effected by Mortgage

¹Exhibit 2413.

²Exhibit 2414.

³Evidence Volume 21 and Exhibit 2466.

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Trust & Savings borrowing \$250,000 from Aurora Leasing Corporation, as security for which 75,000 shares were subsequently lodged. Proceeds of the loan were paid to Barrett, Goodfellow & Co., who paid them to Commodore Business Machines, which in turn paid them back to Aurora Leasing in satisfaction of a debt. Mortgage Trust & Savings then sold 75,000 of the shares, which it had just bought for \$1.45 per share, to Manhattan Sound Corporation at a price of \$4 per share, Manhattan Sound being able to pay the price by reason of a loan made to it by Commodore Factors for \$300,000 for that purpose against the pledge of the 75,000 shares. Proceeds of this loan went direct from Commodore Factors to Barrett, Goodfellow & Co., who credited the amount of \$300,000 to the account of Mortgage Trust & Savings and paid out to Commodore Business Machines the balance of the purchase price for 332,000 shares of Analogue in the sum of \$192,470. As far as Commodore Business Machines was concerned, it sold its 332,000 Analogue shares for \$128,422.87 more than it had paid for them. In respect of 202,000 shares it always owed the original purchase price to Aurora Leasing, and had been required to pay interest to that company. After the deduction of the interest the net profit of Commodore Business Machines on the sale was \$63,887.66. The cost to Mortgage Trust & Savings of its purchase from Commodore Business Machines of \$485,550 for 332,000 shares was reduced by the sale of 75,000 shares to Manhattan Sound for \$300,000, which left Mortgage Trust & Savings with 257,000 shares at a net cost of \$185,550 or 72¢ per share. All the money had been supplied by Atlantic Acceptance, and the name of the real purchaser was successfully hidden behind a corporate dummy in the Bahama Islands.

Intervention of George H. Weinrott

Since control of Analogue Controls had passed out of the hands of Commodore Business Machines, it was necessary to supply the Toronto Stock Exchange with information as to what had transpired. This was done in a letter dated October 21, 1964 from Cimcony Limited, signed by George H. Weinrott as president, to W. M. Ketchen, and since it opens the door to a new prospect in the history of the company, it may be quoted in full.¹

“Dear Mr. Ketchen:

At the request of Analogue Controls, Inc. we give you the following information.

We are Investment Bankers and Managers of a number of investment funds acquiring for our own account and for others special situations which we feel merit development.

¹Exhibit 2417.

The division of the ownership of the 332,000 shares of Analogue Controls, Inc. acquired from Commodore Business Machines (Canada) Limited in the floor transaction on your Exchange on September 14, 1964 is as follows:

1. Cimcony Limited	75,000 shares
2. Overseas Holding Corporation	75,000 shares
3. Regina Investments Inc.	75,000 shares
4. Mortgage Trust & Savings Corporation (Bahamas) Ltd.	32,000 shares
5. Manhattan Sound Corporation Limited	75,000 shares

Analogue is required to clear with the authorities in Washington any changes in its Board of Directors under the Secrecy Act as it furnishes equipment to the United States Navy and to certain prime contractors who are recipients of Department of Defense orders.

Subject to this clearance, it is planned to add to Analogue's Board at least three of the following persons:

- (a) Fred Adair—President of Manhattan Sound Corporation Limited and President of Motion Picture Securities Limited to represent Manhattan Sound Corporation Limited, 411 Fifth Avenue, New York.
- (b) Dr. Kenneth Ray Rozee, Ph.D. M.S.C.—619 Mellwood Road, Toronto. President of Devonshire Laboratories Limited, Toronto, newly formed Canadian subsidiary of Analogue Controls, Inc. through which the company is developing its acquired interest in the production of a vaccine to control the Herpes Virus (cold sores). He is also supervising the tests on a disposable needle and syringe for use in animal anti-biotics. This confidential program of development and production will also be carried out in the United States.
- (c) Dr. L. W. Macpherson, Ph.D. M.R.C.V.S., D.V.S.M., Rt. #1 Nashville Woodbridge, Ontario, who has great experience in the field of anti-biotics, has been obtained as a consultant in this ever-growing field. He will assist Dr. Rozee in the furtherance of the Company's interests along the lines mentioned previously.
- (d) Carrol M. Shanks—Chairman of the Board of Cimcony Limited, former President of Prudential Insurance Company of America.
- (e) George H. Weinrott, 27 East 62nd Street, New York City, President of Cimcony Limited and Treasurer of Housing by Cimcony, Inc. of Columbus, Ohio.

All of the Company's plans will be passed on to Analogue's shareholders as soon as the changes take place in the Board Members.

At the time of writing all of the shares of the Company as indicated above are in the hands of the principals concerned.

Very truly yours,

CIMCONY LIMITED

George H. Weinrott, President"

This was the beginning of an exchange of letters with Weinrott and other directors of Analogue Controls, which occupied some months and will be referred to in its proper place. In the meantime the information contained in it must be examined critically. "Overseas Holding Corporation" was in fact Overseas Holdings Incorporated, and was, with Regina Investment Corporation, a Liberian company. Both of these were incorporated through Samuel Ciglen, Q.C. of Toronto, and, as he himself has informed the Commission, Overseas Holdings Inc. on the instructions of C. P. Morgan, and Regina Investment Corporation on the instructions of David Rush. This was asserted by David Rush in his examination under the Securities Act,² and denied by Morgan in his evidence before the Commission. He maintained that he had no interest in either company, but that both were the creations of David Rush who, he said, had an option on 150,000 shares of Analogue Controls at \$1.50 per share and had never exercised it. Rush maintained that Regina Investment Corporation was a family corporation of which he was the manager, and had an agreement with Morgan, of a verbal nature only, to acquire 75,000 shares of Analogue Controls. He said also that he had acquired, through Ciglen, ownership of Regina Investment Corporation for his family from Leon Ross of Nassau. In any event a demand was made on Morgan, in the spring of 1965, by Peerless Engineering Company, a corporate creature of David Rush, for 75,000 shares of Analogue stock, and there is no reason to doubt that the information supplied by Ciglen is correct; both companies were incorporated in Monrovia on October 21, 1964.³ There is no evidence that either company bought any of the shares of Analogue Controls, and in fact there is abundant evidence that all of the 332,000 shares were bought by Mortgage Trust & Savings, and retained by it subject to the following disposition.

A delivery slip of Barrett, Goodfellow & Co.⁴ shows that 310,600 shares were delivered to Harry Wagman on December 9, 1964 and 25,000 on December 4 to British Mortgage & Trust,⁵ the latter pursuant to a direction dated November 12 and signed for Mortgage Trust & Savings by Frank Cockburn, "controller", instructing the brokers to deliver free to the trust company 35,000 shares of Five Wheels and 25,000 shares of Analogue Controls, which British Mortgage & Trust thereafter held as part security for a loan of \$200,000 to C. Powell Morgan, advanced on November 10.⁶ The 3,600 additional shares of Analogue were acquired by various purchases on the open market. The shares delivered to Wagman were disposed of by lodging 75,000 with Commodore Factors as security for the loan to Manhattan Sound which has been referred to, 75,000 with Aurora Leasing as security for a loan

²Exhibits 4188-9.

³Exhibits 2419 and 2421.

⁴Exhibit 2422.

⁵Exhibit 2424.

⁶Exhibit 2425.

to Cimcony Limited, 75,000 with Aurora Leasing as security for its loan of \$250,000 to Mortgage Trust & Savings, and by delivering the remainder to Morgan himself. The loan to Cimcony Limited was for the large sum of \$500,000 in U.S. funds, and was part of a transaction evolving from the combined ingenuity of C. P. Morgan and George H. Weinrott which is illustrated by three documents. The first is a memorandum of a promissory note to Aurora Leasing from Cimcony of Canada Limited,⁷ giving particulars of the \$500,000 borrowed and the collateral lodged, but without specifying either the interest rate or the term of the loan. The collateral consisted of (1) 75,000 shares of Analogue Controls, (2) 2,000 shares of the preferred stock of Cimcony Limited with a par value of \$200,000, and (3) assignment of an option to acquire 3,000 preference shares of Cimcony Limited, "without recourse", from Mortgage Trust & Savings. The second document is a letter dated October 15, 1964, addressed to Mortgage Trust & Savings in Nassau from Cimcony Limited,⁸ also in Nassau, for which George H. Weinrott signed, and constitutes an agreement to sell 3,000 of the \$100 preference shares of Cimcony Limited, and 25% of the outstanding common stock of the same company for \$300,500, providing that "payment may be made in lieu of all cash" by delivery of 75,000 common shares of Analogue Controls, plus \$500 in cash, all moneys referred to being in U.S. funds. Payment was to be made, in accordance with the terms of this agreement, on or before October 20; the space for acceptance by Mortgage Trust & Savings appended to the letter was left blank. A third document is addressed by Cimcony Limited of Nassau to Cimcony of Canada Limited at 62 Richmond Street West in Toronto and dated October 16,⁹ agreeing to sell to the Canadian company 75,000 shares of the common stock of Analogue Controls, 2,000 of Cimcony Limited preference shares and the assignment of Cimcony Limited's option to re-purchase 3,000 of its own preference shares from Mortgage Trust & Savings, all for the sum of \$500,000 in cash, plus all the outstanding common stock of Cimcony of Canada which accepts the offer by the hand of George H. Weinrott.¹⁰ Finally all this had to be explained to Harry Wagman, who was handling the books of Aurora Leasing Corporation, Cimcony of Canada Limited, and, incidentally, Valley Farm and Enterprises which had provided the only money ever invested in Cimcony of Canada. There is in evidence a draft of a letter to Wagman from Weinrott, much amended, which Weinrott identified as his own communication in his examination by the United States Securities and Exchange Commission,¹¹ and it is reproduced below in its amended form.¹²

⁷Exhibit 2427.

⁸Exhibit 2427.

⁹Exhibit 2427.

¹⁰Exhibit 2427.

¹¹Exhibit 2479.

¹²Exhibit 2426.

"Dear Harry:

Thanks for Sid's call last night. As per my promise, I mailed off at once, a list of the disbursements requested. I hope he will do likewise in sending me the data I need on the same subject matter.

I have just received your letter dated February 5, 1965 regarding the \$100,000 7% Non-Cumulative, Preferred of Cimcony of Canada in the name of Valley Farms. The facts as set forth in the documents that were executed at the time, are as follows:

- (a) On October 15, 1964, Cimcony Limited entered into a contract with Mortgage Trust under the terms of which Mortgage Trust transferred to Cimcony Limited, 75,000 shares of Analogue Control Common, plus \$500 in cash, in exchange for 3,000 shares of Cimcony Limited Preferred and 25,000 of Cimcony Ltd. Common. The Analogue shares were registered with the Toronto Stock Exchange in the name of Cimcony Limited by letter dated October 21, 1964.
- (b) On October 16, 1964, Cimcony Ltd. transferred to Cimcony of Canada the 75,000 shares of Analogue plus 2,000 shares of Cimcony Ltd., Preferred in exchange for \$500,000 in cash plus (10,000 shares) of Cimcony of Canada Common, (being all of the outstanding stock). This transaction took place while Cimcony of Canada was operating under the agreement with me (personally) dated 5/1/63 a copy of which you sent me.
- (c) In order to legally implement the matter, C.P.M. and I agreed that the initial investment of Valley Farms of \$100,000, should now be represented by the issuance of \$100,000, 7% Non-Cumulative Preferred referred to above, and the 10,000 shares of Cimcony of Canada Common, for transfer to Cimcony Ltd.
- (d) Then Cimcony of Canada entered into a contract with Aurora Leasing dated November 3, 1964, under which they agreed to lend Cimcony of Canada \$500,000, secured by 2,000 shares Analogue. That's how Cimcony of Canada obtained the money to pay Cimcony Ltd. the \$500,000 cash; I was told. In addition, the 300,000 of Cimcony Ltd. Preferred was also assigned to Aurora as additional collateral for the loan.
- (e) All of the above transactions were conditioned on the promise that the remaining stockholders of Cimcony Ltd. would invest \$251,500 in cash for Preferred and Common, which was done on November 3, 1964; Evidence of which has been made available to Mortgage Trust.

So I recommend that you check the above, and promptly mail the sum of \$300.00 to Croll for the Preferred.

As to the stamp tax; our board decided that, by reason of the disproportion of stock ownership each stockholder should pay the tax which is based on the number of shares and not their par or back value.

In conclusion:

The transaction on the \$500,000 Analogue, Cimcony Ltd. and Cimcony of Canada Securities, indicates that prior to the time this transaction took place Cimcony of Canada was not a wholly owned subsidiary, but the property of Valley Farms and George Weinrott.

At the time of 'closing' however it was a wholly owned subsidiary, who had borrowed money from a non-associated third party (Aurora) so that it could invest \$500,000 in its parent Cimcony Ltd.

This is a unique technical as well as legal question of

- (1) Whether the common stock of Cimcony of Canada should not be issued in the names of the various stockholders.
- (2) This whole business was done to accommodate C. Powell Morgan so he could raise the \$500,000 from Aurora and he was to give Cimcony Ltd. the benefit of any possible rise in the Analogue Stock alone a figure which he has repeatedly promised to provide. The discussions are based on the hope that if Analogue could produce profit sufficiently large enough to pay off the \$500,000 to Aurora then Cimcony Ltd. 5,000 shares of Preferred (500,000) would be refunded to Cimcony of Canada the borrower, who in turn would transfer same to Cimcony Ltd. for retirement.

Sincerely,
George H. Weinrott"

The reference to "Sid" is to S. S. Chusid, an accountant in Wagman's office, and "Croll" is Senator David Croll of Toronto, who was Weinrott's solicitor. The shareholders of Cimcony Limited were revealed by Weinrott in examination for discovery in the bankruptcy of Cimcony of Canada, held in New York on January 10, 1966.¹³ Carroll M. Shanks held \$100,000 preferred stock and 25,000 common shares, Thomas F. Reilly \$100,000 preferred and 10,000 common, George H. Weinrott \$50,000 preferred and 40,000 common, Mortgage Trust & Savings \$500,000 preferred and 25,000 common shares. No doubt a great deal depended upon the profit that could be generated by a sudden rise in the price of Analogue shares.

Aurora's security was therefore 75,000 shares of Analogue Controls and 2,000 preference shares of Cimcony Limited, registered in the name of Cimcony of Canada and endorsed in blank, 3,000 of the same preference shares registered in the name of Mortgage Trust & Savings which were not endorsed, and the 25,000 common shares of Cimcony Limited registered in the name of Mortgage Trust & Savings, also not endorsed. Against this, \$500,000 in U.S. funds was dispatched by Aurora to Nassau and was used as a down payment to Hugo Oppenheim und Sohn of Berlin in the acquisition of 120,000 shares of Atlantic

¹³Exhibit 3411.

Acceptance, a transaction which must be dealt with in detail later.¹⁴ In short and to recapitulate, Mortgage Trust & Savings notionally delivered 75,000 shares of its Analogue stock to Cimcony Limited, receiving in payment \$300,000 of that company's preference shares, which was the equivalent of a price of \$4 in U.S. funds per share for the Analogue stock for which it had just paid \$1.45. Cimcony Limited then sold the 75,000 shares of Analogue and \$200,000 of its own preferred stock to Cimcony of Canada, in return for \$500,000 and the transfer of all the common shares of Cimcony of Canada, whether this was lawful or not. Cimcony of Canada was able to pay \$500,000 to Cimcony Limited by borrowing that amount from Aurora against the security mentioned above, all these amounts being in American funds. In the upshot, \$500,000 went to Germany with other funds advanced by the shareholders of Cimcony Limited, as will be described.

Inflation of Sales of Analogue Controls at October 31, 1964

The change of direction imparted to Analogue Controls after the withdrawal of Commodore Business Machines from a position which had secured to it 58% of the former company's common stock, and the transactions of its new board of directors, must be postponed for a brief account of the final stages of the disengagement of Commodore Business Machines from a company which had not only not profited from the association, but which owed directly to Morgan and Tramiel the disaster which finally overtook it in the spring of 1965. The fiscal year-end of Analogue Controls was October 31, and from perusal of the comparative condensed balance sheets shown on Table 44¹ it will be seen that those sales for the year ending October 31, 1962 amounted to \$1,278,000, for the year ending October 31, 1963, \$1,561,000 and for the year ending October 31, 1964, which corresponded with the withdrawal of Commodore Business Machines, \$1,897,000, the last being an increase of more than 20%. An unusual distinction is made in the company's sales ledgers,² in that sales are broken down into two ledger accounts, one called "sales" and the other "sales — commercial products". No doubt this reflects the distinction between the potentiometer and switch side of the business on the one hand and the business machines side on the other. For 1964 the total "sales" amounted to \$886,799.10. "Sales — commercial products" for the same period are shown as \$1,018,449.39. The total of these two figures, after providing a small amount for sales discounts, was shown as \$1,896,937.88. "Sales — commercial products" at the end of normal posting on October 31, 1964 were \$229,545.56, but since merchandise returned for the period amounted to \$41,257.83, resulting mostly from difficulties arising out

¹⁴Chapter X.

¹Exhibit 2384.

²Exhibit 2428.

of the constant voltages required for the adapted German machines, the net sales were recorded as being \$188,287.73, there being a slight error in calculation in the order of about \$1. Then two additional entries were made on October 31 of \$530,161.66 and \$300,000 which increased the aggregate of all sales by some 45%. The first of these apparently arose from an agreement dated October 31 between Analogue Controls and Commodore Drycopy Inc.,³ signed for Commodore Drycopy by Jack Tramiel as president, and for Analogue Controls by Fred B. Adair as secretary. It recites the fact that Analogue had been manufacturing a dry copy machine for Commodore Drycopy, and the existence of an agreement of September 1963, providing that the latter could terminate this manufacturing and the fact that it had elected to do so; the parties agreed that Analogue's costs had been \$698,042.34, \$614,-042.34 of which Commodore Drycopy covenanted to pay by assuming a debt of Analogue for that amount due to Baronet Associates for advances in connection with the development and manufacture of the machine, and to pay the balance of \$84,000 at the rate of \$3,500 per month for 24 months, the date of commencement being unaccountably left blank. The Analogue balance sheet showed research and development costs in the unlikely amount of \$166,666.66, and note No. 3, provided by the auditors to the financial statement for the year ended October 31, 1963, refers to this as being for the dry copy machine. For 1964 the research and development item is \$128,333.32, which remains as an asset in spite of the sale of the dry copy business by Analogue on the last day of its fiscal year, instead of being eliminated as one would expect. This had the effect of turning into an apparent profit what properly should have been shown as a loss at the year-end of \$124,985.33.⁴ Of the total purchase price of \$698,042.34 under the agreement, \$530,-161.66 only is, by a journal entry, attributed to sales and the sum of \$158,642.03 is recorded as a reduction of a loan made by Analogue to Commodore Drycopy. The effect of all this is that Analogue sold the dry copy business for roughly \$540,000.

Another addendum to sales made on October 31 of \$300,000 reflected a purported sale of machine parts to Jay-Man Distributors Inc. The parts were in a warehouse and manufacturing building shared by Commodore Drycopy and Analogue, and never physically moved, because on February 1, 1965 Jay-Man delivered an invoice of the same goods to Analogue for the amount of \$300,000, and Analogue recorded a purchase of them at that price on the same day.⁵ No adjustment was made to the sales of the previous year and, on June 30, 1965, Analogue reinstated its original invoice and showed that Jay-Man owed \$300,000 to it once more. No actual payments were made; there was merely an

³Exhibit 2429.

⁴Exhibit 2381.

⁵Exhibit 2430.

exchange of invoices, the address of Jay-Man Distributors being shown as 200 Frank Road, Hicksville, N.Y., the same as that of Analogue Controls and Commodore Drycopy. The effect, of course, was to increase the sales of Analogue for the year 1964, and to increase the profit to the same extent, since there was no corresponding reduction in the assets for research and development costs.

The next step was taken on December 1, 1964 by Commodore Drycopy selling copying machines and parts, involved in its transaction with Analogue Controls, to Jay-Man Distributors according to an invoice of that date in the amount of \$524,265.31,⁶ and Jay-Man paid this amount by assuming the debt of Commodore Drycopy to Baronet Associates.⁷ Baronet substituted Jay-Man as a debtor for Commodore Drycopy by a journal entry in its books dated December 1. Jay-Man, a Tramiel and Kapp company, had no assets with which to pay this debt and was now responsible to Baronet for a very large sum of money which had been advanced by Commodore Factors and originally by Atlantic Acceptance. Not only did Jay-Man have no assets, but according to its income tax return of April 1965 its deficit was over \$800,000.

Jack Tramiel, as may be imagined, was closely questioned about transactions thus crudely contrived to give a false appearance to the published financial statement of Analogue Controls, a public company having its shares listed on the Toronto Stock Exchange. He was a continuing director of Analogue, and indeed was chairman of the board until he was replaced in this position on March 15, 1965 by Major-General Christopher Vokes, a distinguished Canadian ex-officer who was apparently acceptable to the American security authorities in this capacity. The circumstances and documents were put to Tramiel by counsel, and he said that Morgan at every point advised him to do what was done. He said that Baronet Associates and Jay-Man Distributors were companies belonging to Morgan in which he and Kapp had only a nominal interest. Jay-Man sold parts back to Analogue for \$300,000 in February 1965 because F. B. Adair had demanded payment, and this was Morgan's solution to the problem. He, Tramiel, was not an accountant and could not explain why research and development costs had been retained as an asset, when the dry copy business had been sold to one company, and the parts in connection with it sold to another totally unrelated company. The concluding exchange between counsel and witness was as follows:⁸

"Q. It was quite clear, was it not, that the effect of the transaction was to transfer assets alleged to be worth over \$800,000, out of Analogue, in return for cash in the form of forgiveness of debt of Analogue; that is correct, is it not? Analogue sold the business and had sold the parts, and

⁶Exhibit 2431.

⁷Exhibit 2432.

⁸Evidence Volume 86, pp. 11638-47.

it had its indebtedness to Baronet cancelled to the amount of the sale, is that so?

A. That is right, yes.

Q. That was the first effect. The second effect was to increase the sales of Analogue on the last day of its year, is that correct?

A. When you say increase, no, I wouldn't know it increased; it was just sold.

Q. But if they had not sold them, their sales would have been less?

A. Yes.

Q. By some \$800,000?

A. Yes.

Q. The third effect then was to enable Analogue to report sales in the order of \$1,800,000, and to report a small profit for the year ending 31 October, 1964, which it could not have reported had these transactions not taken place on the last day of the year, is that correct?

A. The only—no, that is not correct. The only thing they would not have is the sales, nothing to do with the profit.

Q. Yes, Mr. Tramiel, I suggest to you that since Analogue showed as an asset research and development costs in the order of \$120,000-odd and continued to show them as an asset after having sold the business in respect of which the research and development costs had allegedly been incurred, the effect was to increase Analogue's profit from the sale.

A. I don't follow exactly what you are saying, Mr. Shepherd, because—

Q. Is it not analogous to a situation such as this? If Analogue had had a thousand dollar bond and had shown a thousand dollar bond as an asset, then had sold the thousand dollar bond on the last day of the year and had simply recorded sales of one thousand dollars but had left the thousand dollar bond as an asset, the effect of that would be to enhance Analogue's profit?

A. Yes, but I believe that in this document here that we have paid some \$160,000 for research and development.

Q. In the previous year, Mr. Tramiel, you carried, I put to you, \$166,666.66 as research and development relating to that Drycopy business?

A. Right.

Q. At the end of October, 1964, the company still carried a sum in excess of \$120,000?

A. Maybe it was more than \$160,000.

Q. But it was not the previous year.

A. Maybe it was during the year.

Q. I beg your pardon?

A. It could have been during that particular year.

COMMODORE BUSINESS MACHINES

Q. Do you say that you think perhaps that during 1964—

A. Yes.

Q. —Analogue Controls expended the difference between \$120,000-odd and \$698,000 in developing its dry-copy machine?

A. It could have been.

Q. Indeed it could. Now, a transaction like that, as an officer of the company you would remember. Did Analogue Controls spend a sum in the order of half a million dollars during the year ending 31st October, 1964 in developing the dry-copy business?

A. You say half a million dollars?

Q. Yes.

A. But the \$164,000 was for the past two or three years.

Q. Yes?

A. It was not for one year. If you ask the question if they would have spent \$120,000 during the one year—

Q. Yes?

A. I say it is very feasible.

Q. Did they?

A. This I couldn't answer you. I am not an engineer, but when I was getting the figure that was spent it was verified by the accountant, and I was satisfied.

Q. Didn't you tell me yesterday, Mr. Tramiel, that Analogue Controls had in fact gone out of the business of trying to manufacture these machines, and you were trying to sell Analogue Controls?

A. I mentioned this on Thursday, yes.

Q. Is that not correct?

A. Yes, but it still doesn't mean—

Q. Do you think it is likely that they spent \$120,000-odd during that year on research and development?

A. What I was trying to sell does not mean that the engineers knew if we want to sell it, because we had to continue being in business and try to get the money back in the investment way.

Q. Mr. Tramiel, if they had not spent the whole \$120,000 on 31st October, 1964 even, do you think it proper to continue to show that as an asset, research and development, after the company has sold the business?

A. I am not an accountant, Mr. Shepherd, but I know that the engineers working on research and development, they develop certain things, and just by developing a copying machine they could have knowledge to develop something else from the same thing. How they came, on what basis they did it, I couldn't answer you.

Q. Then in February—

A. But, Mr. Shepherd, one more answer to your question: By October 31st how the statement was set up and whatever it is, I felt personally that Commodore already had sold this business. How it is going to be done was more up to the new owners than to me.

Q. But you didn't know who the new owners were?

A. I did know. Mr. Adair was the president; he was a big shareholder.

Q. But you didn't know who the new owners were?

A. Mr. Adair was the president; he was a big shareholder.

Q. Mr. Tramiel, you have told me, and I have asked you a number of questions about it to make sure that I understood you properly, you have told me not fewer than six times that you did not know who bought control of Analogue Controls, is that correct?

A. That is correct, but here even you showed me this. Mr. Adair signed this. That means he was president.

Q. He was indeed.

A. He must have been appointed by the new owner.

Q. Yes?

A. So as far as I am concerned he was the representative of the new owners. If they hadn't the shares or not I found out afterwards, but he was the representative of the new owners.

Q. Yes.

A. For that reason—

Q. What was the point you wanted to make?

A. My point was, October 31st he was really the president, where when it came to the statement he was involved in the statement to know what is right or wrong.

Q. Indeed he was, and you were chairman of the board and involved in the approval of that statement, were you not?

A. Chairman of the board to a certain extent as sitting there because I was there previously, but my interest was completely sold.

Q. Mr. Tramiel, I put it to you that these sales were created on the last day of Analogue's year for the purpose of causing Analogue to show a break-even position in its published financial statement, and for no other reason; and that respecting the \$300,000 sale of parts, the parts never moved, they were invoiced back again to the vendor within four months; and that it was never intended that Jay-Man pay \$300,000 for these parts.

A. Are you telling me—

Q. I am putting this to you.

A. —that these are the facts?

Q. I am putting this to you.

A. But you are telling me this is the facts?

THE COMMISSIONER: It is a suggestion counsel is making to you and inviting your comment on. What is your comment on that suggestion?

A. My comment is that I cannot answer the question the way counsel, the way Mr. Shepherd has said, that this was done for this and this reason. It was only done for reasons where the facts were there, that people were present, accountants were present. Mr. Morgan had said to me previously that he would like to see Analogue come out even in this transaction.

MR. SHEPHERD: Of course, Mr. Tramiel, we need not quarrel about it. That was precisely the point I wanted to make. Would you please tell me when that conversation took place?

A. Some time in September, 1964.

Q. And he said that, did you say, Analogue was to come out even at the end of the year, is that correct?

A. This is what Mr. Morgan asked.

Q. Yes?

A. Mr. Shepherd, pardon me, if that is what he said, was it still not up to me to make it even or not even? Yes, if it comes to buy the dry-copy and if the research is \$150,000 and he says 'No, I will sell it to you for \$175,000', this meant, yes, Mr. Morgan, that he could adjust the price, but when it comes to the accounting I cannot control it.

THE COMMISSIONER: Do I understand then that you felt that you had no obligation in this respect as chairman of the board of Analogue Controls?

A. To do what, Mr. Commissioner?

Q. No obligation as far as the statement was concerned?

A. My obligation was to see the facts from the auditor and from management of the company, to present me with the facts.

Q. You have indicated that Mr. Morgan suggested to you that all these arrangements should be made in order to give what I can only infer was a false impression to the public about the balance sheet of Analogue Controls. Do you say that you accepted Mr. Morgan's direction on this point?

A. No, Mr. Commissioner. Mr. Morgan told me he would like to see it come out even, the way I took it.

Q. Then you saw to it that it did?

A. No, sir.

Q. Well, who did if the chairman of the board didn't have anything to do with it, who did?

A. I didn't say I had nothing to do with it. I have said that when the facts came in and it looked to me that the proper facts from the auditor and from management—

Q. You call all this juggling on the books, facts?

A. I do not call it juggling at all, because I didn't juggle it and I don't know how to juggle it. I am not an accountant."

The evidence of C. P. Morgan naturally had a different emphasis, and it shows, in spite of the difficult circumstances under which it was taken, and in the absence of all the documents which were put to Tramiel some eight months later, a remarkable grasp of the details of the transaction.⁹

"Q. In order to abbreviate these hearings again, I will put to you a lengthy question.

I put it to you that on the annual statement of Analogue dated the 31st of October, 1964, the gross sales were shown at a figure in the order of \$1,800,000 and that gross sales would have been approximately \$900,000 for that year ending the 31st of October, 1964, were it not for the fact Analogue entered into two transactions which for want of better term I will call special transactions and they were these. First, Analogue, as I am informed, was in possession of a large number of dry copy machines which they had been unable to sell because there had been some technical difficulty encountered with these machines which were of European origin. Is that correct?

A. To the latter part of your question or the whole thing?

Q. Anything that is wrong about it, would you correct me?

A. To the best of my knowledge, what you say generally is true.

Q. Then that business was called the dry copy business and Analogue also had some part which related to typewriters there also?

A. I think maybe it is probably dry copy parts.

Q. And Analogue sold the dry copy business for a sum ranging up towards \$700,000 and it also sold to Jay-Man the parts for approximately \$300,000 and the effect of these sales after all adjustments had been made was to increase Analogue's sales by \$900,000 and shortly after the year-end Jay-Man is purported to have purchased these parts for \$300,000, sent an invoice to Analogue purporting to convey back to Analogue the same parts for \$300,000. Can you help me as to what this was all about and the part everybody played in it?

A. I will start with the acquisition by Mortgage Trust and Savings of the controlling interest in Analogue which is about September 1964 with the annual report, the fiscal year-end, coming up in October, six weeks away.

I was present at a meeting in New York at which Mr. Adair and Mr. Weinrott took over directorship in Analogue Controls Inc. And it was a lengthy meeting because there was, in addition, a severance account to be paid by Commodore Business Machines which represented as you know, two share quarters, half by Commodore and half by Analogue. They worked out a formula to pay the development expense that was shown on Analogue's books.

⁹Evidence Volume 26, pp. 3450-9.

COMMODORE BUSINESS MACHINES

Q. This was in relation to the dry copy business?

A. Yes, I presume it was. Secondly, they worked out a deal for Mr. Tramiel to take out his dry copy inventory and to take out his dry copy parts inventory as of October 31st. Mr. Tramiel was a continuing director in Analogue. It was agreed, in view of the fact it was such a short period of time to the end of the year, that they would wait until the physical inventory was taken October 31st, so these machine transfers or facts would be taken out of Analogue inventory and transferred back to Commodore Dry Copy Incorporated which was a subsidiary company of Commodore Business Machines in New York and this was, in fact, a matter of record.

It is in the Analogue minutes of what took place with regard to the making of the statement October 31st and where the inventory went and where the parts went and the prices at which they were brought is solely the responsibility of Jack Tramiel.

No other director of Analogue—I am talking about the two new ones, Weinrott or Adair—had any knowledge of the value of the inventory. Mr. Tramiel made the statement that the company looked like it broke even for the fiscal year. That had to be represented by the physical inventory which was to taken October 31st. I am trying to bring this point clearly to you, Mr. Shepherd. If there were any figures that would misrepresent the October 31st, 1964 statement, they were wholly part and parcel of Mr. Tramiel and Mr. Zupa, nothing to do with the continuing directors.

The deal was they would get their parts out and the year-end would represent approximately a break-even figure.

Q. Did Mr. Tramiel have any beneficial interest in Analogue?

A. He sold 332,400 shares as President of Commodore Business Machines and he guaranteed at that time that his company had approximately broken even.

Q. Did this guarantee that the company approximately broke even ever get committed to writing?

A. I don't believe it did, but it was part and parcel of the deal. Commodore made a profit on the sale of Analogue shares of about \$80,000.

Q. Did you have any opinion as to what the value of the dry copy business in fact was?

A. No, I didn't.

Q. Did you have any opinion as to what value of the parts inventory was?

A. I had no knowledge.

Q. Do you now have any opinion?

A. I can only give you this information that came to me from Mr. Adair who was continuing President of Analogue. When he got this invoice back from Jay-Man, he hit the roof about it because it looked like the statement was false. He was concerned about the fact that Analogue had produced a false statement for its shareholders as he was its continuing President.

He couldn't tell you anymore than I as to the value of the machines or parts because he is as unfamiliar as I am with that particular business.

Mr. Tramiel had personal knowledge.

Q. Were the facts that Analogue sold the parts inventory to Jay-Man for \$300,000 and that Analogue then asked Jay-Man or one of its officers—I don't know whom—to pay the \$300,000 and Jay-Man said they couldn't pay the \$300,000 because they didn't have any moneys and they then sent invoices to Analogue saying that Jay-Man had sold the parts back to Analogue for \$300,000—are those the facts?

A. As far as I know. I know the invoice was received by Mr. Adair. The rest of the statement I can't answer.

Q. How was it envisaged that Jay-Man would be able to pay \$300,000 for the parts?

A. I believe the idea was that the parts were worth \$300,000 and that they were to be sold in due course to Commodore Business Machines in the United States and I believe although I am not certain, that Baronet was advancing money to Analogue at that time and when the inventories were transferred to Commodore Dry Copy and Jay-Man, it only represented a switch of advances in Baronet to these two companies as against advances that were being made at that time to Analogue Controls.

Q. Now, the dry copy business, it was purchased by one of the subsidiaries of Commodore Business Machines. Am I correct in that?

A. The dry copy business?

Q. Yes.

A. Did it not go back to Commodore Dry Copy?

Q. That is correct. It was sold to Commodore Dry Copy?

A. Right.

Q. Then after the end of the fiscal year of Analogue, did Commodore Dry Copy not then sell that business back to Jay-Man in return for assuming the indebtedness of Commodore Dry Copy to Baronet?

A. What Mr. Tramiel did in the switch around, I can't tell you.

Q. The only benefit I suggest which was going to arise out of producing the financial statement of Analogue, which would appear more attractive than it would have done had the \$900,000 additional sale not been added, would accrue to owners of shares of Analogue and you were the owner of shares of Analogue?

A. Analogue would never have been purchased at \$1.50 except on the understanding that these two sets of inventories were there to be taken out to leave Analogue as an operating potentiometer company because there was in the background a pending and brewing deal with a chap by the name of Quinn to go into Analogue to take over the potentiometer business.

He was the senior engineer at Fairchild who had a big potentiometer business and the assurance that was given to him by Mr. Tramiel was that the company had just about broken even. The book value of the

inventory on the books of Analogue when they were sold back to the dry copy company or Jay-Man would show an approximate break-even figure for the year.

There was never any attempt on my part to try and get a pass on losses that were evidently in the books of Analogue because I had no knowledge that there were losses in Analogue represented by these dead inventories.

Q. Do I understand then, if I can sum it up, that you assert this to be the case.

Commodore Business Machines owned 332,400 shares of Analogue Controls and at some date prior to September, 1964, do you say that Mr. Tramiel and yourself and other directors of Commodore Business Machines discussed the sale of Analogue Controls shares owned by Commodore Business Machines to you or to a purchaser to be produced by you at \$1.45 per share and do you say that Mr. Tramiel and Mr. Kapp informed you, prior to you undertaking to purchase these shares at \$1.45 that the dry copy business then owned by Analogue and the inventory of parts would be sold by Analogue at prices to be determined as follows; with respect to the dry copy business, an amount fairly calculated as being equal to the investment which Analogue had in this dry copy business and with respect to the parts inventory, at an amount representing a fair market value of the parts and that Mr. Tramiel and Mr. Kapp told you that after these two sales had been consummated, Analogue as at 31 October, 1964, would be approximately in a break-even position on the year's operations, that it would have rid itself of the dry copy business and parts and would then be only a potentiometer business plus its connection with Devonshire Laboratories and you purchased the shares on the faith of those representations and that you didn't know, nor do you now know, the details of how these sales of the dry copy business and the parts inventory was carried out, nor have you any informed opinion as to the propriety of methods adopted or the reasonableness of the sums which are purported to be paid for those parts and dry copy business?

A. Yes, that statement in its entirety is true plus Mr. Tramiel on behalf of Commodore Business Machines agreed to pay an amount to take out of Analogue the development expenses which were then present on the books of Analogue at the time of transfer of the 332,000 shares."

New Directors of Analogue Controls: The Pharmaceutical Experiment

Two matters of importance remain to be considered in the history of Analogue Controls; the first was the new enterprise about which Morgan had spoken to Tramiel, and the second the use made by Morgan of the block of shares which gave him, through Mortgage Trust & Savings his Bahamian company, control of Analogue in a transaction which has already been examined in part in connection with the raising of \$500,000 in U.S. funds from Aurora Leasing Corporation. By referring back to Weinrott's letter to W. M. Ketchen of the Toronto

Stock Exchange of October 21, 1964 it will be seen the exchange was told that it was planned to add to the board of Analogue at least three of Fred B. Adair, president of Manhattan Sound Corporation, Dr. Kenneth R. Rozee of Toronto, president of Devonshire Laboratories Limited, Dr. L. W. MacPherson of Woodbridge, Ontario, Carrol M. Shanks, chairman of the board of Cimcony Limited and George H. Weinrott, president of Cimcony Limited. At a meeting of the board of directors of Analogue held on October 23, 1964 Carman G. King, Manfred Kapp and Henry W. Goldsmith resigned and were replaced by Dr. Rozee, Dr. MacPherson and Weinrott. The name of George H. Weinrott has occurred a number of times in these pages and will occur again. He was a man at this time approaching 70 years of age, of considerable energy, and with large ideas about his rôle in the mortgage brokerage business with which he had been familiar during most of his life. His first association with C. P. Morgan arose out of an original contact with Eugene Last of Dalite Corporation (Canada) Limited, who planned to build prefabricated houses in the republic of Panama and who consulted Weinrott in New York in 1962. Thereafter the company known as Cimcony of Canada Limited was formed, perhaps the first of all the Cimconys, Cimcony being a contraction, according to Weinrott, of Central International Monetary Corporation of New York. Weinrott's grand design was to have a number of Cimcony companies all over the world, taking mortgages of real estate and selling them, as Weinrott suggested, in New York. Cimcony of Canada, which played a part in the operations of Dalite at Thompson, Manitoba, where the latter company was committed to supply prefabricated low-cost housing, was incorporated on April 19, 1963, and its only infusion of capital came from Valley Farm and Enterprises to the extent of \$100,000, under circumstances which were referred to in Weinrott's letter to Wagman quoted on page 434. Wagman, no doubt on Morgan's direction, declined to concede an interest in the company to Weinrott in accordance with the latter's understanding of what he was entitled to as expressed in that letter, and Cimcony of Canada remained firmly within the Trio orbit; but Weinrott continued, in spite of his appetite for Atlantic money, to preserve Morgan's confidence and to occupy a place in his plans for large-scale financing in the future. In the meantime he had created Cimcony Limited and Cimcony of Great Britain Limited in the Bahamas, and has acquired, or had incorporated a company in the Isle of Man. Housing by Cimcony Inc. was located in Columbus, Ohio to manufacture panels for prefabricated houses and, together with F.F.C. Construction Inc., a wholly-owned subsidiary of Cimcony of Canada, spent a good deal of Atlantic money producing one prototype in a run-down redevelopment area of Buffalo, New York which proved to be a fiasco. Weinrott appears to have had a good nose for easy money, and to have shrewdly assessed its availability from Atlantic on

the easy terms of capitalized interest and indefinite repayment countenanced by Morgan, before whose eyes he dangled the glittering prospect of borrowing for Atlantic the huge sums about which he was accustomed to talk, but never to handle. All in all, Weinrott was one of the more plausible of Morgan's close associates in the caste of characters which surrounded him, and battered on the strange mixture of gullibility and greed in his makeup.¹

Lachlan William MacPherson, who was examined by the Ontario Securities Commission on March 14, 1966,² was a veterinary surgeon, a doctor of philosophy of Edinburgh University and a specialist in microbiology in the School of Hygiene of the University of Toronto. In addition to his teaching and administrative duties at the university, he practised as a veterinarian and had, from time to time, attended to horses owned by one Myer, alias Michael, Rush, a self-described stock promoter, but in fact a professional criminal with wide and, indeed, perilous connections in the field of organized crime. Dr. MacPherson artlessly observed: "He was well dressed, drove a Lincoln Continental and as far as I could see belonged in the same category as my other clients". Myer Rush took him out to dinner and introduced him to his brother, David Rush, in the latter's "luxuriously furnished" apartment on Avenue Road. There he was told that David Rush was promoting a company in the pharmaceutical field, and was asked to consider becoming a consultant or a director of such a company. The acquaintance ripened until Dr. MacPherson was offering David Rush some suggestions as to what field of pharmaceuticals might be developed to commercial advantage. One of these, in which he himself was interested, was the preparation of a vaccine for immunization against the herpes virus which causes cold sores. At this point he was asked by David Rush if he would meet and talk with the president of Atlantic Acceptance Corporation. The meeting took place at the Faculty Club of the University of Toronto, at which, apparently, Dr. MacPherson was the host, and where he explained the advantages of producing "veterinary biologicals" cheaper and more easily than "human biologicals", and enlarged on the herpes vaccine. Morgan then brought up the subject of a combination injection and holding device for making injections of drugs into animals, described as "Injectovial", which he had been trying to obtain from England, and the upshot of the discussion was that Dr. MacPherson agreed to act as a consultant for a company to be formed at a fee of \$5,000 per year.

At this luncheon meeting Analogue Controls was mentioned as the company which would establish either a pharmaceutical division or a subsidiary company for the purpose of implementing Dr. MacPherson's ideas, and he may even have appeared to suggest this himself, since

¹Exhibit 2479.

²Exhibit 3777.

Myer Rush had persuaded him to buy some stock of that company. The subsidiary company was Devonshire Laboratories Limited, incorporated on September 29, 1964 as a private company in Ontario, on the application of Samuel Ciglen acting as the company's solicitor. A laboratory was set up at 147 University Avenue in premises adjacent to David Rush's office, and Dr. Kenneth Rozee, an assistant of Macpherson's*, who was more directly in touch with research on the herpes vaccine, agreed to become president of the company, and to devote his services part-time to further research. Dr. Rozee had achieved some success with guinea-pigs, but had not brought his vaccine to the stage where it was proven to be harmless to human beings. After some progress had been made by Dr. MacPherson in developing the "Injectovial" so that it might be manufactured cheaply out of plastic, Neville Levinson, a large borrower from Atlantic, was called in from Buffalo to manufacture prototypes and samples, and MacPherson was induced by David Rush to give an interview to a publicity man by the name of Henry Janes, who in due course promoted the appearance of an article on the whole project in the *Toronto Daily Star*. The injectovial had originated with E. Y. Rabbiah of Racan Photo-Copy Corporation, who had acquired the idea in England, but to what extent he did more than suggest the basic principle to Morgan is not clear. In any event Dr. MacPherson, with wide experience of the use of ampoules during the last war, produced what he was convinced was a workable design, was also responsible for the name Injectovial, and took at least the preliminary steps to get the device patented. Of the \$20,000 invested by Analogue Controls in Devonshire Laboratories, \$5,000 was given to Dr. MacPherson in accordance with his contract, and \$5,000 was paid to Manhattan Sound Corporation in New York, and paid by it to David Rush for his public relations work which, in Morgan's opinion, had a positively harmful effect. After what Dr. MacPherson described as \$100,000 worth of research had been contributed to Devonshire Laboratories, particularly by Dr. Rozee, sufficient progress had been made with the injectovial to arouse acute interest on the part of British Drug Houses Limited and companies in Belgium. All, as will be seen, was swallowed up in the final catastrophe. The last meeting attended by Dr. MacPherson was a general meeting of shareholders of Analogue Controls on March 15, 1965, at which General Vokes, apparently as a nominee of David Rush, became chairman of the board, Fred B. Adair became president and Robert W. Quinn, upon whose knowledge of the potentiometer business many hopes were built, executive vice-president. There plans were laid to bring together, under the one roof of Analogue Controls, a pharmaceutical business represented by Devonshire Laboratories, a potentiometer division, and a sound division represented by Manhattan Sound Corporation, Manhattan West Sound Corporation and another company in New York by

the name of Recording Sound Studios Inc. At the time of Atlantic's default Dr. MacPherson resigned as a director of Analogue, thoroughly disillusioned by his business experience.

David and Myer Rush

The spectacle of C. P. Morgan, even at this late date a respected and trusted financier, sitting down and making plans with David Rush, a well-known stock market tout, and his even more disreputable brother, Myer Rush, only slightly in the background, is deplorable enough, but Morgan had now reached the stage, no doubt with foreknowledge, of being prepared to go to any lengths to establish his own personal fortune. It is not irrelevant to this inquiry to consider at least some of the facts which were known, or could have been discovered about the Rush brothers. David Rush in 1964 was 45 years old, and is five years older than his brother. He had occupied an office in the same building as Morgan's executive offices when he was publishing the "News Observer". His promotion of a public issue of shares of John Northway & Sons Limited, a well-known and long-established Toronto department store business, resulted in the bankruptcy of the company in early 1963 in spite of the efforts of Frank Kaftel, a connection which, be it said, David Rush denied on oath to the United States Securities and Exchange Commission officers who examined him in the Intertel inquiry on January 5, 1966. His criminal record was modest compared with that of his brother, consisting of a conviction for assault occasioning bodily harm in 1941, a reformatory sentence of three months definite and three months indefinite on one count of robbery and two counts of theft in 1944, and a suspended sentence for malicious damage in 1950. His activities in the United States had involved him in trouble with the Immigration Department of that country, but as he told the American examiners, "as a result of my early conviction my honesty became impeccable and I am an honest man". He had discovered that Morgan had a personal interest in Dalite Corporation (Canada), to which large and improvident loans of Atlantic money had been made, and he found out enough about other improper loans and transactions to make himself a nuisance to Morgan and to threaten his peace of mind. The latter admitted giving him 5,000 shares of Analogue Controls to keep him quiet, and although David Rush maintained that these were only part of the 75,000 shares to which Regina Investments was entitled, no payment was apparently made. The extent to which Regina Investments was entitled to 75,000 shares of Analogue Controls remains in doubt, but if Morgan was willing to concede an option, never apparently reduced to writing, to David Rush of 75,000 of his precious Analogue shares at \$1.50 per share, the desire to placate him must have been strong indeed.

In comparison the criminal record of Myer Rush is substantial. One must be careful to distinguish it from his police record which is much longer, for a large number of charges brought against him were withdrawn, dismissed or dismissed on appeal. He was convicted of theft on one charge in 1940, on two charges in 1941, all in Toronto, on another charge of theft in the same year in British Columbia, and again in Toronto in 1943, for all of which he received terms of imprisonment. He was again convicted of theft in 1944 in Toronto, and again imprisoned, having by this time reached the age of 20. In 1947 he was deported from the United States to Canada after serving a one-year sentence for attempted grand larceny, and in 1950 was imprisoned for illegally re-entering the United States and again deported to Canada. A number of charges thereafter laid were either withdrawn or dismissed, until in 1954 he was again imprisoned in the United States for illegal entry, his sentence being increased by one escape and one attempted escape from the federal penitentiary in Atlanta, and as a result he was again deported to Canada in 1956. In 1958 he was imprisoned for possession of stolen goods and, somewhat surprisingly, released on parole in 1959. Thereafter he leapt into prominence when he was beaten in his own Toronto residence by assailants using a baseball bat, and finally, in November 1967, in the course of the preliminary hearing on charges against him for conspiracy to defraud and conspiracy to trade in unregistered securities, he was blown up by a bomb in the Sutton Place Hotel in Toronto and barely escaped with his life. Although these last events are not part of his criminal record, and had not yet occurred in the autumn of 1964, they provide some indication of abnormal activity.¹ By that time this accomplished individual had acquired race horses, expensive cars, Swiss bank accounts and, according to the local press, the status of "mining promoter". His known associates included illegal operators in the securities business with international reputations as practitioners of organized crime.

The Quickened Pace of Analogue Trading

During a period of seven months prior to July 30, 1964 trading in the common stock of Analogue Controls had averaged only 138 shares a day, in a price range of an opening quotation at 85¢ per share, a high of \$1.05, a low of 55¢, and a closing quotation of 75¢. Then on July 30, 9,692 shares were traded through Annett Partners Limited at a price

¹This was written late in 1967. Since that time Myer Rush failed to appear for trial in Toronto and forfeited bail of \$55,000, was extradited from England after being apprehended in the act of leaving that country which he had reached by way of Panama, convicted at the Toronto Assizes on February 3, 1969 of possessing cheques knowing them to have been obtained by fraud and given the maximum sentence of ten years imprisonment by the Chief Justice of the High Court. His appeal against conviction was dismissed by the Court of Appeal on June 25, 1969, but sentence was reduced to six years.

of 80¢ a share, the sale being made by a New York broker and the purchase by Dallas Holdings Limited as to 5,692, and Mrs. Kathleen Christie as to 4,000 shares. On August 4 a client of Barrett, Goodfellow & Co. bought 1,000 shares at 90¢, and Myer Rush and Daytona Investments Limited, a company wholly owned by David Rush, bought 2,100 shares at 91¢ to \$1. The next day Rush and Daytona Investments bought 4,000 shares through three brokers, and there was a purchase by the Barrett, Goodfellow & Co. inventory account, all these ranging upward from a price of \$1.20 per share. Thereafter, until September 12, the stock traded up to a price of \$1.55. The date of the sale by Commodore Business Machines of 332,000 shares to Mortgage Trust & Savings Corporation (Bahamas) Limited was September 14, and on the next day a Dow Jones report "came over the wire" in the following terms:

"TORONTO—DJ—A UNITED KINGDOM PHARMACEUTICAL FIRM PLANS TO PURCHASE CONTROLLING INTEREST IN ANALOGUE CONTROLS INC FROM COMMODORE BUSINESS MACHINES—CANADA—LTD ACCORDING TO A SPOKESMAN FOR ANALOGUE—CLOSING DATE FOR THE PURCHASE IS OCT 19

YESTERDAY COMMODORE TO FACILITATE THE TRANSACTION TRANSFERRED ITS INTEREST IN ANALOGUE—332,000 SHARES—TO A TRUST COMPANY—THE SINGLE TRANSACTION ON THE TORONTO STOCK EXCHANGE WAS AT 1 DLR 45C A SHARE

ACCORDING TO THE ANALOGUE SPOKESMAN THE BRITISH FIRM WILL SELL ANALOGUE'S PHOTO-COPY MANUFACTURING OPERATION BACK TO COMMODORE UPON COMPLETING PURCHASE OF THE STOCK

ANALOGUE CONTROLS WHICH HAS 571,800 SHARES OUTSTANDING MANUFACTURES VOLTAGE MEASURING DEVICES IN ADDITION TO DRY-PROCESS COPY MACHINES—THE COMPANY'S PLANT IS LOCATED AT HICKSVILLE, N Y—V—"

During this period, out of 61,397 shares traded, Myer Rush and Daytona Investments bought 13,300 shares, and other brokerage accounts in the names of Gropp, Rabbiah and Swartz, newly opened to trade in Analogue shares and apparently connected with Rush, bought 12,000. Selling was mainly from New York, and there was some by Kathleen Christie and Carman G. King. On the whole this was a period of rising prices in a thin market. The period from September 14 to November 19 was of a different order. For much of what follows the Commission is indebted to the evidence of Mr. R. E. Lavender, the Exchange Examiner of the Toronto Stock Exchange, who testified on June 16, 1966¹ and who conducted an examination of the trading of the shares of Ana-

¹Evidence Volume 45.

logue Controls on behalf of the exchange in May 1965, by which time the company's failure to furnish full information as to the details of change of control effected on September 14, 1964, and the pattern of trading which had become discernible, were causing concern. Mr. Gillman's evidence is, of course, the continuing prime source of information on the subject, particularly in connection with the method by which the market was supported, and the extent to which C. P. Morgan was personally responsible for and in control of the acquisition and disposal of the shares.

Before proceeding further, a word must be said about the nature of the transaction involving the transfer of 332,000 shares by Commodore Business Machines to Mortgage Trust & Savings, because it was unsatisfactory information about this which eventually provoked a thorough and revealing examination by the exchange, resulting in the suspension from trading of Analogue's stock before the market opened on May 14, 1965. The Toronto Stock Exchange requires from each listed company completion of annual questionnaires, and a copy of the annual report containing financial statements. When there is an intended trade involving a change of control of the company, information about it must be supplied and, if required, a filing statement must be submitted, unless the company concerned has been specifically exempted from such a requirement. In September 1964 Analogue Controls was an exempt company. Companies automatically not exempt were mining and oil companies, except for the larger producers, smaller industrial companies, and such others as the exchange might designate. The exchange, however, was in a position to require a filing statement from exempt companies at any time. The transaction on September 14 was a "special size transaction", involving a lower rate of commission than normally paid, and requiring special authorization by the exchange, which was usually given over the telephone in anticipation of a written application. Such a transaction is completed off the market and is not a "floor transaction", as it was described by Weinrott in his letter of October 21, for two reasons; the marketing of a large block of shares might disrupt regular trading on the exchange, and the transaction itself might be frustrated by portions of the block being pared off in the course of ordinary purchases and sales on the floor. A special size transaction does not, at the time approval is granted, as it was for this one on September 14,² invariably require the giving of detailed information as to the purchasers, but in a case where change of control appears to have taken place it is expected. In this case it had, and Weinrott's letter of October 21 was sent in response to a telegraphic inquiry addressed to the secretary of Analogue, Morton R. Ruden an attorney in the office of Benjamin H. Oremland in New York.³ The lapse of a month between the date of

²Exhibit 2449.

³Exhibit 2450.

approval and the making of the inquiry seems to have been unduly long, and a somewhat leisurely correspondence ensued on the subject, which eventually exasperated the officials of the exchange to the point where they were convinced something was wrong and launched their inquiry. In the meantime much water had flowed under the bridge.

N.G.K. Investments Supports the Market

N.G.K. Investments Limited was a company in which C. P. Morgan held a minor interest, but was conceded complete control over its management by W. P. Gregory and C. G. King. Morgan employed it to support the market in Analogue shares between September 22, 1964, when it made its first purchase, and February 11, 1965, when it made the last, during which time N.G.K. Investments bought 67,400 shares and sold 6,300, for a long position of 61,100 and a net cost of \$316,491. The shares purchased were lodged with Barrett, Goodfellow & Co. as security for margin, and some purchases were financed during the period by loans from Aurora Leasing Corporation. On October 20, 1964 Morgan signed a delivery slip for Barrett, Goodfellow & Co. indicating that 2,000 shares of Analogue belonging to N.G.K. Investments were received by him on that day;¹ the books of N.G.K. Investments disclose no payment for these shares, which on October 20 were selling at \$4.15. On January 28, 1965 the company caused to be delivered 10,000 shares of Analogue to the Royal Bank of Canada at King and Yonge Streets, Toronto, according to another delivery slip which is accompanied by a requisition for securities, noting that delivery was to be made to the Royal Bank in Montreal for the account of Banque Commerciale in Luxembourg. At this point there remained in the hands of Barrett, Goodfellow & Co. 49,100 shares.

The next distribution was recorded by a letter from N.G.K. Investments to Barrett, Goodfellow & Co., dated March 31, 1965, enclosing a cheque for \$103,886.94 as payment in full of the margin account, and requesting the brokerage firm to have ready for delivery for April 1 the 49,100 shares referred to.² The shares were delivered, and Morgan's initials appear on the delivery slip.³ There was found in the records of N.G.K. Investments a copy of a letter, dated February 10, 1965, bearing the initials "C.P.M." in Morgan's handwriting, and under them the handwritten words "See Harry", addressed to the branch of the Royal Bank of Canada at Freeport on Grand Bahama Island, instructing it to sell 50,000 shares of Analogue Controls at the prevailing market prices for the account of N.G.K. Investments. In or about the first week of February Morgan personally opened an account in that branch under the name "Morgan Trust", and it was from this account that he

¹Exhibit 2433.

²Exhibit 2435.

³Exhibit 2436.

disposed of his accumulation of Analogue shares to Barrett, Goodfellow & Co. which set up in its own records a brokerage account in the name of the bank. The manager of the Freeport branch, R. C. A. Lafontaine, did not testify before the Commission, but Mr. Maurice Clennent, an assistant general manager of the Royal Bank of Canada in Montreal, gave evidence as to the nature of the bank's records of the "Morgan Trust" account in Freeport,⁴ and copies of the ledger cards were subsequently produced.⁵ No trace of these instructions in their original form was found in the Freeport branch. Although shares of Analogue were being sold on its instructions on and after February 13, according to both the records of N.G.K. Investments and Barrett, Goodfellow & Co., and no stock was delivered until April 1, there is no evidence that the bank was selling on behalf of N.G.K. Investments. That company did not record the sale of any securities during February but on March 31, 1965, there is a journal entry on sheet No. 23 of the general journal as follows: "sales of securities 51,100 A. Controls, deposit accounts C.P.M. April 1 — \$100,000, R.Bank April 12 — \$169,376"; the additional 2,000 shares were, of course, those delivered to Morgan in the previous October. Two deposit slips⁶ indicate that N.G.K. Investments on April 1 received \$103,000, and on April 12, \$169,376, the first being marked "Aurora \$3,000, C.P.M. \$100,000", and the books of Aurora Leasing Corporation recorded an additional loan of \$3,000 on this date, being the day of the discharge of Barrett, Goodfellow & Co.'s margin account for N.G.K. Investments in the amount \$103,886.94. The second slip of April 12 is noted "Royal Bank \$169,376", and the depositor's initials are "W.P." for Walter Pahn. With these funds N.G.K. Investments repaid part of its loan from Aurora Leasing in the amount of \$168,670.32. Since on March 31 and April 1, 1965 the price range of the shares of Analogue Controls was 6¾-6½ and only about 10,300 shares were traded, and since the sum of \$269,376 which are the net proceeds of N.G.K. Investments' transactions indicates a price of just under \$5.50 per share, it would appear that this company was paid \$50,000 less than the prevailing market price. The 49,100 shares delivered by Barrett, Goodfellow & Co. into the physical possession of C. P. Morgan, were, according to a delivery slip of that firm⁷ and a handwritten summary of the securities held by Aurora Leasing,⁸ delivered to it as collateral for the loans of N.G.K. Investments; Aurora retained 24,100 for the moment and delivered back to N.G.K. Investments five certificates totalling 25,000 shares. These five certificates were then returned to Barrett, Goodfellow & Co. for the account of the Royal

⁴Evidence Volume 70.

⁵Exhibit 3591.

⁶Exhibit 759.

⁷Exhibit 2438.

⁸Exhibit 2439.

Bank of Canada, and a receiving slip of that firm⁹ for April 1 confirms this, and indicates that these were in part certificates delivered to the account of Mortgage Trust & Savings, signed for by Wagman on December 9, 1964, and apparently derived from N.G.K. Investments in the first place.

On April 10, 1965, the following letter was written by Lafontaine of the Freeport branch of the Royal Bank of Canada to Barrett, Goodfellow & Co.:¹⁰

"We enclose 50,000 shares of Analogue Controls Inc., to be disposed of for our customer as previously arranged by him.

To date we have on file delivery slips showing that you have had delivered to you 150,000 shares of the stock up to March 29, 1965. We are of the opinion that there was a delivery to you on March 31st or thereabouts of a further 25,000 shares, which receipt may possibly be in transit to us. Please send us a duplicate receipt in any event, and one for the enclosed certificates. Your records should indicate that a total of 225,000 shares have been delivered.

We have received drafts totalling Canadian \$600,000 up to March 31, 1965, and on April 9th a further Canadian \$350,000 which has been credited to an account as instructed by our customer. When the balance of the shares in the account and the enclosed are sold please remit to us".

Barrett, Goodfellow & Co. did not issue a receipt for these shares for the account of the bank until April 19, and from this receipt it transpires that 35 certificates for 1,000 shares each were those delivered to N.G.K. Investments on April 1 from Aurora Leasing, and five certificates for 5,000 shares each those issued to Mortgage Trust & Savings on December 9, 1964.¹¹

This shrouded and complicated transaction, as it emerges from the evidence available to the Commission, is susceptible of three possible explanations. Stating it shortly, N.G.K. Investments recorded in its books that it had sold 51,100 shares of Analogue Controls on March 31, 1965, but did not indicate who the purchaser was. Of these, 24,100 shares were delivered to Aurora Leasing as security for loans made by it to N.G.K. Investments, and were subsequently released when the latter made a partial payment on April 12, with funds received from a source marked "Royal Bank". C. P. Morgan had obtained, without payment at the time, 2,000 shares in October, 1964, and paid \$100,000 by cheque to N.G.K. Investments for the remaining 25,000 shares. This may be explained by: (1) a sale by N.G.K. Investments of 25,000 shares to Morgan at \$4 per share, on a day when the market price was approximately \$6.50; or (2) a sale by N.G.K. Investments of all its shares to Morgan, who paid for them by his own cheque for \$100,000 and a draft

⁹Exhibit 2441.

¹⁰Exhibit 2442.

¹¹Exhibit 2443.

from the Royal Bank for \$169,376; or (3) the sale of the 25,000 shares released by Aurora Leasing to N.G.K. Investments on April 1 and delivered to Barrett, Goodfellow & Co. for the account of the Royal Bank of Canada, which were sold by the bank on behalf of N.G.K. Investments and paid for on April 12. Whatever the correct analysis may be, this company, the affairs of which were entirely in the hands of C. P. Morgan, received \$50,000 less for its shares than the contemporary market price as a result of having supported the market throughout these months, so that Morgan could make other arrangements for the disposal of the large accumulation by his Bahamian company, Mortgage Trust & Savings.

Concern and Frustration of the Toronto Stock Exchange

Weinrott's letter of October 21 to the Toronto Stock Exchange¹ was far from satisfactory as a source of information, since it did not give the names of individuals controlling Analogue Controls. On November 5 the exchange wrote to Weinrott asking for names, addresses and occupations of persons having a greater than 5% interest in each of Cimcony Limited, Overseas Holdings Inc., Regina Investment, Mortgage Trust & Savings Corporation (Bahamas) Limited and Manhattan Sound Corporation, which crossed a letter from F. B. Adair, dated November 4, containing similar information to that previously provided by Weinrott.² Weinrott, writing for Cimcony Limited in a letter dated November 26,³ eventually advised the exchange that the holders of more than a 5% interest in Cimcony Limited were Carrol M. Shanks, Thomas F. Riley and George H. Weinrott, and further, that there were no shareholders of Regina Investment, Mortgage Trust & Savings and Overseas Holdings having more than a 5% interest in Cimcony Limited. This letter says nothing about the 25% interest held in Cimcony Limited by Mortgage Trust & Savings. Then Fred B. Adair, writing for Manhattan Sound on December 1, informed the exchange that the shareholders of this company with an interest of more than 5% were Gustav Mortensen, Dante A. Saraceni, Donald W. Reid and Adair himself, neglecting to mention Mrs. C. P. Morgan's 30 shares and, perhaps excusably, C. P. Morgan's interest in Reid's shares.⁴ Weinrott's letter, in particular, was not considered satisfactory, and on December 10 the Board of Governors of the Toronto Stock Exchange published its decision, to designate Analogue Controls as a "non-exempt" company, and required it to submit a filing statement, in a letter dated December 15⁵ and enclosing a set of filing statement forms. The next communication was provided by Orem-land's firm in New York which wrote on January 22, 1965, announcing

¹pp. 430-1.

²Exhibits 2451-2.

³Exhibit 2453.

⁴Exhibit 2454.

⁵Exhibit 2455.

Oremland's resignation as a director of Analogue Controls and the election of General Vokes. The exchange's important letter of December 15, however, remained unanswered. A phone call was made to Adair on December 23, 1964, and a letter written by Ketchen to Oremland on January 28⁶ pointing out that Adair had promised the filing statement by January 15, 1965, and that its immediate receipt was now "imperative". The filing statement was finally forwarded by Oremland on February 5,⁷ and on its front page, where there is required "a brief statement of the material change in the affairs of the company in respect of which this statement is filed" appeared the answer: "Acquisition of Devonshire Laboratories Limited capital stock for \$20,000 (Canadian funds)". It is surprising that the officers of the Toronto Stock Exchange did not now realize that they were being toyed with, particularly since answers to the requirements of the filing statement still withheld information or comment upon beneficial interests in the five companies which were the largest registered shareholders of Analogue Controls. But the filing statement committee decided on February 11 to have another try at getting some sense out of the company's representatives, and a letter was accordingly dispatched on February 15, setting out in painstaking detail what Oremland should do to furnish the required information. In spite of the strongest possible expression in this letter of the need for speedy compliance, no reply was forthcoming, and finally on March 19 the writer of the letter of February 15 telegraphed the company requiring immediate submission of a filing statement amended in accordance with these instructions, which had included disclosure of beneficial ownership of the 332,000 shares held by the five companies. The amended filing statement arrived in Toronto at some point between receipt of that telegram and March 25, but no further action was taken by the filing statement committee because the exchange was beginning to receive reports of heavy purchases in Europe of Analogue stock, which was steadily rising in price. It was not until May 10 that W. L. Somerville, the executive vice-president of the exchange, discussed these reports with Lavender, and that the two of them concluded that the market in Analogue shares was being manipulated. Sales of Commodore Business Machines shares in Europe were also being scrutinized at this time, and Barrett, Goodfellow & Co. and Annett Partners were the two member firms under study.

The Pattern of Trading in Analogue Stock

After the trading of July 30 when, as has been seen, Annett Partners acted on both sides of the trade of 9,692 shares, that firm was found to be almost entirely involved with sales, chiefly on behalf of Alan Christie and his wife and Carman King. It was otherwise with Barrett,

⁶Exhibit 2457.

⁷Exhibit 2459.

Goodfellow & Co., whose inventory account between September 14 and November 19 bought 35,737 and sold 34,370 shares on steadily rising prices, from a low of \$1.45 to a high of \$5.50. It was in the trading of this account that there was first noticed a prevailing pattern of "uptick" trades on the last trade of each day. An uptick occurs where the trade is made at a higher price than that of the immediately preceding trade for a board lot, or odd lot, and out of 48 trading days during this period the last trade was on an uptick on 38 days, on 10 it was even, and in no case was it on a downtick. The significance of the last trade of the day being thus distinguished is that it is recorded in the press as establishing the closing price for the day, and has the effect of producing the appearance of a rising market. In 26 of these 38 cases the buyer was Barrett, Goodfellow & Co. for their inventory account, or for N.G.K. Investments, and on one occasion for the R. A. Goodfellow special account. As a supplement to the pattern of uptick trading, 23 cross-trades on the floor were revealed, with the Barrett, Goodfellow & Co. inventory account involved and the firm being on both sides of the trading. In seven cases the inventory account sold to N.G.K. Investments, and in four bought from it; in four cases it bought from Dallas Holdings, the remaining examples involving other clients. Of the seven sales by the inventory account to N.G.K. Investments five were on uptick, as were 18 others to N.G.K. Investments not involving the inventory account. This account was in a long position at all times during the period, and maintained it by making purchases of 1,500 and 1,000 shares from Dallas Holdings and 1,600 and 600 shares from N.G.K. Investments on a downtick, a situation where a firm would need its clients' consent, or would be acting detrimentally to their interests. In this case the Commission's information is that the clients of Barrett, Goodfellow & Co., which were under the control of C.P. Morgan, did give their consent. The R. A. Goodfellow special account supplied 6,000 shares; for the rest, Myer Rush and Daytona Investments bought 11,500 and sold 14,800 shares, while the Gropp and Swartz accounts bought 24,100 and sold 6,900. N.G.K. Investments and Dallas Holdings between them bought 20,700 shares and sold 13,692, and Christie and King between them sold a total of 22,600 shares. On the whole there was a predominance of selling by Canadian clients and local stock-brokers, but the price of Analogue shares rose steadily to \$5.50 by the end of the period.

The third period of the four under which this study of the stock market trading in the shares of Analogue Controls may be conveniently divided runs from November 20, 1964 to February 8, 1965, and is characterized by a steadiness in price, and a higher than average volume of shares traded. N.G.K. Investments traded every day, except for a brief period when Manhattan Sound was a major buyer, the former buying 51,600 shares and the latter 30,000 shares, accounting for 72%

of the trading. Purchases were also made by the Barrett, Goodfellow & Co. inventory account, Mortgage Trust & Savings and Myer Rush, but Rush was predominantly a seller to the extent of 8,400 shares; he stated to the Commission that he and his friends sold all their shares at $5\frac{1}{8}$ on telephoned instructions given by him from Geneva, and he would have sold a further 46,000 shares which were held by a broker in Nassau if his brother David had not purloined them. The Gropp and Swartz accounts sold 5,000 shares each, and other accounts connected with Rush 10,700. The Christie accounts sold 3,200, and Carman King 11,179 which were, according to the records of Annett & Co., the balance of his holdings. New York brokers generally were selling to the extent of some 31,000 shares, buying only 6,500. In the 53 trading days the low price for Analogue stock on 46 of them was $5\frac{1}{8}$, and on a number of these days this was the only price for the day, which indicated planned support of the market.

The fourth and final period of trading began on February 9 and closed on May 13, 1965, and was chiefly significant for the selling by the Royal Bank of Canada account of 203,000 shares and heavy buying from overseas. The volume of trading increased from an average of 2,140 shares per day in the previous period to 5,100. It should be remarked that the detailed observations on all this trading of Analogue shares made by the Exchange Examiner were based on his subsequent written report to the Toronto Stock Exchange, but his preliminary examination of the situation at Barrett, Goodfellow & Co. on May 11 and 12 convinced him that the major part of the controlling block of 332,000 shares, about which the exchange had been fruitlessly seeking information since the previous September, was being sold on the market through the Royal Bank account at Barrett, Goodfellow & Co. This account sold 203,000 shares and the inventory account bought 11,709, some from other accounts directed by C. P. Morgan, and sold 19,053. A total of 161,217 shares were bought for numerous banks, stockbrokers and individual clients in European countries through 18 different firms which were members of the Toronto Stock Exchange, orders coming from Belgium, Holland, West Germany, Switzerland, France and Italy. In addition another member firm in Montreal, L. G. Beaubien & J. L. Levesque Inc., bought 77,824 shares from Barrett, Goodfellow & Co., apparently for European clients, and another 30,430 shares were bought by Credit Suisse, Swiss Corporation (Canada) Investments and Socan Incorporated, all of Montreal. Beaubien & Levesque sold only 1,840 shares, and domestic trading had no particular pattern, sales being somewhat ahead of purchases, but in New York brokers were selling rather than buying in a proportion of over seven to one. Trading in this period was generally heavy and the price of Analogue shares rose to \$7, the European buying and the selling by the Royal Bank having begun precisely on the same day.

Re-entry of Frank Kaftel

On the morning of May 14, 1965, before the market opened, the shares of Analogue Controls were suspended from trading and have never since been reinstated. Morgan must have been caught off-balance by this action, although, as will be seen, a great many of his accumulated shares had been sold. If the design had really been, as the Rush brothers assert, to run the stock to \$18 or \$19 per share, the suspension was a serious setback to the plans for the Analogue manipulation which had been laid with Frank Kaftel in Paris, beginning with a second meeting on December 3, 1964 between him, Morgan and Goodfellow, and settled in the following month, on January 10, 1964, at a third. There was to be one more meeting between Morgan and Kaftel, when Morgan made his fourth expedition with Goodfellow on April 4, and it is safe to say that the progress of the Analogue coup was discussed. Yet it was not until the I.F.A.S. weekly bulletin of May 4 appeared that Kaftel's general clientele was invited to participate. The English translation of the relevant material is as follows:¹

"A SUBJECT FOR DISCUSSION is to know WHERE one can buy TO-DAY company stocks which will bring you LARGE PROFITS TO-MORROW? . . . Which have strong "GROWTH" possibilities? . . . Which are easily financed thanks to connections and to a Management which PROVES ITSELF in its undertakings?

In Europe, no bank or financial institution will be able to give you an UP-TO-DATE report on this company because its power is the result of recent acquisitions, one of which occurred two weeks ago. . . . The information available to them dates from 1964. . . . THEY DO NOT GIVE A TRUE PICTURE.

IFAS HAS THE COMPLETE FILE.

To-day, IFAS recommends an AMERICAN COMPANY quoted on the Toronto Stock Exchange.

This progressive company may finally become an important element in the BUSINESS WORLD, thanks to the wide diversity of its activities, to its solid commercial and financial technique, and to strong PERSONALITIES at the head of each of its departments.

1) During the past weeks it has acquired:

RECORDING STUDIOS INC.: one of the first specialists in TV serials. Has some of the best programmes now showing.

MANHATTAN SOUND and MANHATTAN WEST SOUND: These two companies have contracts with the most important movie companies, such as 20th CENTURY FOX, M-G-M, and many others.

¹Exhibit 2188.

Their New York studios are WITHOUT COMPARE in this industry. The new MANHATTAN SOUND film centre has, as it were, united under the same roof all aspects of the movie industry. It has 90,000,000 feet of film available which it is now offering on a "per foot" basis.

MANHATTAN also has two contracts with U.S.I.A., whereby it translates the agency's films in 32 different languages for world-wide distribution. At the top of this business is a well-known man, Fred B. Adair.

2) "PRECISION POTENTIOMETER" DIVISION

This company, acquired two months ago, is directed by one of the best-known personalities in the field: Mr. R. W. Quinn, formerly Chief Engineer, responsible for producing FAIRCHILD CONTROLS. He has surrounded himself with highly qualified staff.

This division has several brilliant projects for the future and is in the process of equipping itself to enter the field of conducting plastics.

3) "DEVONSHIRE" DIVISION

In 1964, this was the only interesting side of the company. Now known as DEVONSHIRE LABORATORIES Ltd. Directed by two well-known scientists, Drs. Rozee and McPherson, who have created a new device called INJECTOVIAL. Several large, world-wide PHARMACEUTICAL companies are interested, and this could be a source of large profits for the company. DEVONSHIRE will be a laboratory with very diverse activities.

We are in the process of condensing and translating the reports in our hands, and these will soon be available.

DO NOT DELAY — BUY TO-DAY

ANALOGUE CONTROLS, quoted in Toronto

Price: \$ Can. 6¾

THIS IS A GOOD SPECULATIVE INVESTMENT WITH GREAT
POSSIBILITIES, A SURE WINNER FOR YOUR PORTFOLIO.

(Write us for a condensed translation)"

This was followed on May 11 by a shorter note:

"A. ATTENTION ANALOGUE CONTROLS SHAREHOLDERS.

We were pleased to receive a very large number of requests for the condensed translation. Because of the volume of the demand, we regret we were able to despatch these only yesterday. . . . Those who have not yet written SHOULD DO SO IMMEDIATELY. There is no doubt that these shares will CONTINUE TO RISE AND THEY SHOULD BE ACQUIRED AT THE DAY'S PRICES.

ANALOGUE CONTROLS CLOSED YESTERDAY AT \$7 ON THE
TORONTO STOCK EXCHANGE."

Then the bulletin of May 18 had to deal with the unwelcome news of the suspension of trading:

"IMPORTANT COMMUNIQUÉ FOR ALL ANALOGUE
CONTROLS SHAREHOLDERS.

An unexpected event occurred on Thursday after the Toronto Stock Exchange closed and we learned of it only when the market opened at 10.30 a.m. in Toronto, or 15.30 hours in Europe. On Friday, most of our employees leave their work at mid-day, only the administrative staff remaining. It was therefore impossible for us to pass this information on to our clients.

We cannot understand what could justify the decision of a restrictive measure temporarily suspending, on Friday May 14th, the official quotation of the shares of this company.

On Thursday last, after the market had closed, the Stock Exchange Committee met to decide upon a temporary restrictive measure.

During that day, only 3,080 Analogue Controls shares were traded, the last price being \$6 $\frac{7}{8}$. This is certainly not a large number of shares traded. . . . In September 1964, 419,260 shares of this company were traded, . . . in December 1964, these shares were traded at a price of \$6 $\frac{1}{8}$ at the highest, . . . NOBODY BREATHED A WORD. . . .

When these shares were being traded last December at \$6 $\frac{1}{8}$, the company appeared pretty unsubstantial in comparison with what it is to-day. . . . ANALOGUE CONTROLS is a good and solid company, well managed, and in recent months it has acquired its Precision Potentiometers Division, Manhattan Sound Corp., Manhattan West Sound Inc., and Recording Studios Inc.

THESE SHARES ARE CERTAINLY WORTH MUCH MORE TO-DAY than the \$6 $\frac{1}{8}$ of LAST DECEMBER.

Our opinion is that many of the bears are embarrassed, this is the snake in the grass.

DO NOT BE DRAWN INTO SACRIFICING YOUR SHARES TO
SATISFY THE APPETITE OF THE BEARS WHO COULD BE AT
THE BOTTOM OF THIS MANOEUVRE. EVERYTHING WILL BE
RESTORED TO ORDER AND THESE SHARES WILL BE
TRADED AT A PRICE HIGHER THAN THEIR MAXIMUM OF
\$7. DO NOT LISTEN TO TITTLE-TATTLE. CALL US AT ANY
TIME FOR CORRECT INFORMATION.

These shares are at present being traded over the counter in Toronto and New York. (Remember the difference in the dollar rate—about 8%)."

The issue of May 25, which dealt scathingly with the detractors of Commodore Business Machines, had a further note about Analogue Controls:

"As for ANALOGUE CONTROLS, this same financial journal says: "From Canada I have been warned against ANALOGUE CONTROLS INC. This speculative stock has been offered from door to door in Germany. Its price has dropped sharply. Trading has been suspended in Toronto. An enquiry into the company has been opened".

We are aware that insurance, bonds, and cosmetics are offered door-to-door, but we are not aware that ANALOGUE CONTROLS is offered in this way in Germany. As for "an enquiry into the company has been opened", this is RIDICULOUS, and we quote below the OFFICIAL BULLETIN of the TORONTO STOCK EXCHANGE of Friday May 14th.

"ANALOGUE CONTROLS INCORPORATED—Quotation of these shares will be suspended at the opening to-day pending examination by the Stock Exchange of the recent manner in which this stock has been traded".

We do not know what is meant by "manner in which this stock has been traded", but we do know that the ANALOGUE CONTROLS company is ABOVE ALL CRITICISM.

Since this stock is actually being traded over the counter, this creates some confusion, since a number of brokers and banks are giving prices which are VERY FAR from the really PRACTICAL PRICES. Some of them have been misled, others are profiting by the chance to BUY at a LOW PRICE and to RESELL immediately at a HIGHER PRICE. We shall publish every week in our Bulletin the over-the-counter market price. You may call us any time.

Due to the NATIONAL HOLIDAY, the Stock Exchange was closed yesterday. On Friday, over the counter at Toronto the shares were traded up to \$5 $\frac{1}{8}$. ANALOGUE CONTROLS is not only being traded over the counter in Toronto, but also in New York.

WE HAVE FREQUENTLY STATED THAT WE ARE NOT INFALLIBLE, BUT AS REGARDS COMMODORE BUSINESS MACHINES AND ANALOGUE CONTROLS WE STILL BELIEVE THAT AT THE PRESENT PRICE THESE STOCKS SHOULD BE KEPT OR BOUGHT. DO THIS THROUGH YOUR BANK OR BROKER."

On June 8 problems of Analogue were attributed to short sales in the following notes:

"ANALOGUE CONTROLS.

The BEARS are trying to satisfy their appetites, but without much success. Trading last week was up to \$4 $\frac{3}{4}$. Closing price yesterday: \$3 $\frac{3}{4}$ -4.

DO NOT SELL, we believe that everything will TURN OUT RIGHT eventually."

The final reference occurred in the issue of June 15, where the price of Analogue at \$3¼ to \$3½ was mentioned incidentally to a short item on Commodore Business Machines.

"Remember May 28th 1962, when DOW JONES dropped 35 points in one session and dropped 220 points from its annual maximum. It still came back again and continued to rise. It has been PROVED that in time, whatever happens, EVERYTHING IS RESTORED TO ORDER. And remember that existing conditions are BETTER AND SAFER. SO DO NOT GET EXCITED. There are still many interesting stocks to buy to-day in spite of the present market.

C.B.M.: (\$7½-7¼) . . . ANALOGUE CONTROLS: \$3¼-3½".

Morgan's account of his arrangement with Kaftel was given before the Commission on May 3, 1966.¹

"Q. Was it arranged that a substantial number of shares would be sold in Europe through the agency of Mr. Frank Kaftel from Paris and Luxembourg?

A. It was done this way. Just off the record—

THE COMMISSIONER: Rather than go off the record for which there is no authority—this is the sort of thing you do in an examination for discovery sometimes, but not in these circumstances—if you want to pause to collect your thoughts on it—

THE WITNESS: No, I can give you the answer.

THE COMMISSIONER: Yes.

THE WITNESS: Could you repeat that question?

MR. SHEPHERD: May the question be read back?

THE COMMISSIONER: Mr. Gillies, can you read Mr. Shepherd's last question back?

THE REPORTER: (Reads):

Q. 'Was it arranged that a substantial number of shares would be sold in Europe through the agency of Mr. Frank Kaftel from Paris and Luxembourg?'

THE WITNESS: Actually the arrangement was different from the way Mr. Shepherd put the question. Mr. Kaftel got an option on these shares at \$3.50 and he, in whatever manner he uses in creating his public relations interest in stocks in Europe, interested the purchasers and they bought stock in the open market and the arrangement was that any sales that were being made would be made out of an account set up in the

¹Evidence Volume 26, pp. 3428-35.

COMMODORE BUSINESS MACHINES

Royal Bank in Grand Bahamas. This meant there may be one thousand shares go into the open market on order and there might be four hundred sold out of that account.

In other words, there was never any assurance you would ever get any of the sales. But he felt that he was strong enough to interest his people in acquiring these shares. He got the difference between the \$3.50 and whatever the market price was which was set at large by the buying and selling on the open market. There was no troubled market or anything of that nature. It was ordinary trading. If the sales were made, the agreement was that all the sales would come out of the Grand Bahamas account.

MR. SHEPHERD: Was the arrangement then that Mr. Kaftel would use his best endeavours to interest persons in purchasing shares of Analogue Controls and any sales which took place would take place through the Toronto Stock Exchange where the stock was listed?

A. That is correct.

Q. Then was the arrangement that any shares which were sold by N.G.K., Mortgage Trust and Savings or the other—Manhattan Sound, Cimcony Limited or other companies if any which then held any of the 416,000 shares that had accumulated would be paid for by the purchasers in the ordinary course but that the vendor company, being among those I have named, would keep \$3.50 per share and if there were an excess, it would go to Mr. Kaftel?

A. With one exception. N.G.K. was to get their purchase price. The rest was to go to the other companies on a ratable order.

Mr. Kaftel got—regardless of the shares, he got the excess over \$3.50, but on the division of the proceeds of that account, N.G.K. Investments got their full purchase price.

Q. Do I understand you to say that so far as Mr. Kaftel is concerned, he got the excess over \$3.50 on any shares which came out of any of these companies, but internally it was your intention that N.G.K. which had purchased its shares on the open market and had not received a portion of the \$1.45 shares would get back the sum of money which they had actually paid out to acquire those shares on the market?

A. That is correct.

Q. Now, the bank account at the Royal Bank of Canada in Freeport, did you open that account on the day on which the bank opened in the new premises?

A. Very close to that time.

Q. Did that stand in your name personally?

A. It stood in the name of Morgan Trust.

Q. Which was a nominee name for yourself?

A. Yes, because of the number of people involved in this transaction.

Q. Did you say Morgan Trust?

A. Yes.

Q. You were the signing officer in respect of that?

A. I was.

Q. I think I have a document some place which would be of some assistance. I show you a photo-copy of handwritten letter, unsigned, with the words 'Powell', unsigned and ending with the words 'please check Goodfellow'.

I have reason to believe that is Mr. Kaftel's letter. It was among your papers. Is that a letter from Mr. Kaftel to you?

A. I can't tell you whether this is his writing or not because I am not familiar with it, nor have I seen this document or this piece of letter that I can remember. But it is along the lines we were mentioning.

Q. Yes. It is a handwritten memorandum which was among your papers, Mr. Morgan.

A. I see.

Q. I thought perhaps you would be able to state it was Mr. Kaftel's?

A. I can't tell you.

Q. In any event—

A. It deals with the subject we have been talking about.

THE COMMISSIONER: On the basis of that identification, do you want to have it marked?

MR. SHEPHERD: I think I was going to put one more statement, then—

THE COMMISSIONER: All right.

MR. SHEPHERD: The statements of fact set out in the letter in any event are accurate?

A. I don't believe they are.

Q. You think they are not accurate?

A. That is right.

Q. Which particular ones do you feel are inaccurate, Mr. Morgan?

A. Well, I should put it this way. I don't know whether this was the volume. I don't know whether this was the amount they were short and without having all the facts and figures before me, it would have been impossible for me to have checked this out. This is only his recapitulation of what took place.

THE COMMISSIONER: That will be Exhibit 1913, I think.

—EXHIBIT No. 1913: Unsigned photo-copy of handwritten letter commencing 'Powell' and ending 'Please check Goodfellow'.

MR. SHEPHERD: Now, it was necessary, I take it, since the gross proceeds of sales which were made through the Royal Bank in Freeport were deposited into that bank to get to Mr. Kaftel his appropriate share. Is that correct?

A. Yes.

Q. Was this done through the agency of Mr. Julius Schoen who obtained the moneys in cash from the Royal Bank and took it to Mr. Kaftel?

A. Either he got it in cash or bought drafts in Nassau and disposed of them. But he handled it out of Freeport.

Q. How did he get it out of the Royal Bank?

A. In other words, I would give him a cheque and the Royal Bank would cash it for him or I would give him two cheques, one representing his commission, which I believe was ten per cent.

Q. That is Mr. Schoen personally?

A. Yes. The rest he would purchase a draft either in the Royal Bank in Freeport or physically take it on a certified basis to Paris or where ever he met Mr. Kaftel.

Q. He would physically take the cash?

A. The cash or the certified cheque or use the facilities of a private bank in Nassau for transferring it.

Q. Are you able to state approximately what Mr. Kaftel's profit was on the transaction?

A. I would say he would get approximately \$375,000.

Q. And would Mr. Schoen's ten per cent come off that or would it be in addition?

A. No, it would be including his.

Q. Mr. Schoen would be entitled to approximately \$37,500?

A. Yes. The rest would go—

Q. —to Mr. Kaftel, out of which he paid whatever expenses were incurred?

A. Yes. He was quite a world traveller."

The document which was put to Morgan and entered as Exhibit 1913 reads as follows:

"Powell —

Analogue

At the time of second meeting you stated you had a position of 416,000 shares. Since beginning Feb. 9 to the 15 of April on the exchange there was 261,049 shares traded. You where short 167,950— (of which we have not been paid in full) Plus 10,000 shares not on the Exchange which we got paid 6500 only—

Now according to these figures there should be in other old clients hands only (50,000 shares). This means you have 239,000 shares still in your box.

Powell—Last week we did not work the volume was nothing—Your long position for week was 1700. (which you can deduct of coming week). But under these conditions I can't for the life of me see why when we get going this week we should not get at least 80 to 90% of volume. Its to screwy. Please check Goodfellow."

The authorship of this, half-acknowledged by Morgan, was flatly repudiated by Kaftel. Expert examination of the handwriting, together with the signatures "F. Kulunderino" on the Bank of Nova Scotia cheques drawn on the account of Daylite of Grand Bahama Limited, and specimens of Kaftel's handwriting obtained in Paris, indicate the likelihood of this note being in Kaftel's hand. The style and content of the document make this cautious conclusion virtually a certainty.

Kaftel described in Paris a different arrangement between himself and Morgan, based on Goodfellow's assurance that Analogue shares had cost Morgan \$2.20 each. According to him the arrangement agreed to was that the proceeds of all shares sold at a price in excess of \$2.20 per share were to be divided equally between the two of them, after deduction of brokers' commission. Goodfellow was to keep an accurate record of the shares sold which Kaftel could check against the reported volume on the exchange, and the latter was to receive his share of the proceeds from Jules Schoen. He did not know how much money was paid to Schoen, and said that by June 1965 Morgan owed him \$256,000 as a result of the Analogue transaction; this had never been paid. When Mr. Shepherd pointed out to him that payment substantially in excess of \$300,000 had been made to Schoen out of the Morgan Trust account in the Freeport branch of the Royal Bank of Canada, he acknowledged receiving some of that money, but not as much as half of it. Schoen had told him that he had paid other people and given some cash to Morgan. He had felt that he was not getting his share of the proceeds, and that shares were being sold off the market of which he had no record. Morgan, he said, had asked him originally to find a purchaser for 10,000 shares at the beginning of the transaction, and this he had done, but after Analogue collapsed he had been compelled to make good the loss suffered by the purchaser, a bank, the goodwill of which he had to retain. No doubt this reference was to the 10,000 shares delivered to the Royal Bank in Montreal for the account of Banque Commerciale in Luxembourg. Kaftel denied receiving any benefit from a payment made from the Freeport account of \$58,500 to Atlas Bank Limited, a self-styled international bank in Nassau under Swiss auspices.

It is difficult to know what to make of this, and it is improbable that Kaftel was telling the whole truth. He said, however, that he had been present when Morgan made telephone calls to Switzerland, and he had formed the impression that Morgan had bank accounts in Lausanne,

Zurich and possibly in Geneva. This would be a convenient thing to say if he desired to create the impression that Morgan had put beyond Kaftel's reach a large portion of the profits which should have been his. At the same time it would be strange if Morgan, now deeply committed to the underworld of finance, made no use of those Swiss banks which provide security and anonymity to their depositors.

Complicity of R. A. Goodfellow

Of the complicity of Goodfellow there can be no doubt; both Morgan and Tramiel treated it as a matter of course, and the report of the Exchange Examiner is convincing enough. Customers agreement cards, customarily obtained by brokers from companies trading on margin, were found at Barrett, Goodfellow & Co. for N.G.K. Investments, Dallas Holdings, Masco Construction, Valley Farm and Enterprises and Associated Canadian Holdings, and the persons entitled to give direction to the firm respecting their trading were for Dallas Holdings, C. P. Morgan, for Masco Construction and Valley Farm, Harry Wagman, and for Associated Canadian Holdings, Harry Wagman and Manfred Kapp. Mortgage Trust & Savings, entirely under the direction of C. P. Morgan, did not trade on margin. As to the brokerage account of the Freeport branch of the Royal Bank of Canada, the daily blotters at Barrett, Goodfellow & Co. showed three different entries as to sales for that account, which were corrections of entries of the previous day in each case, showing that these sales had been made for the account of C. P. Morgan. The explanation given to the Exchange Examiner was that the order clerk had made an error in the use of the identifying account number, but since there were identical "errors" on different days, this statement must be considered a falsehood. During the final period of trading the R. A. Goodfellow special account was long at the beginning by 6,000 shares, bought another 1,600 shares between February 12 and March 3 and sold the whole 7,600; then, between April 26 and May 10, a further 19,000 shares were bought and sold, so that at the end of the period the account was flat. All sales made through this account were at the same price as those made through the account of the Royal Bank, and purchases were made at a price of $\frac{1}{8}$ of a point below the Royal Bank selling price prevailing at the time, which indicates that the R. A. Goodfellow special account was supporting the market, so that the Royal Bank account would not be compelled to drop its price. Throughout the whole period from July 30, 1964 to May 13, 1965, excluding from the calculation the "control block" of 332,000 shares, trading through Barrett, Goodfellow & Co. amounted to 30% of the buying and 42% of the selling, all but 1% of which was done by the Royal Bank, Dallas Holdings, N.G.K. Investments and other companies and individuals to which special reference has been made,

including the Barrett, Goodfellow & Co. inventory account. This trading may be broken down as follows:

July 30-September 14	buying 13%; selling 10%	
September 14-November 19	buying 28%; selling 23%	(Inventory account 15% both buying and selling.)
November 20-February 8	buying 77%; selling 5%	(45½% of buying for N.G.K. and 26½% for Manhattan Sound.)
February 9-May 13	buying 19%; selling 73%	(8% of buying for account of Beaubien & Levesque.)

During the period the Barrett, Goodfellow & Co. inventory account and the R. A. Goodfellow special account represented 10% of the market and 13% of all sales, and the Royal Bank account was responsible for 59% of all sales.

Rennie Goodfellow said that Morgan always liked an orderly market and movement confined to an eighth of a point. At 8.45 a.m. throughout this period, in what he described as a "ritual", he gave a verbal report to Morgan over the telephone. He recalled Jules Schoen being in his firm's boardroom with Morgan on two occasions, but did not care to speculate on the subject of their conversation. His attitude before the Commission was that he at all times merely carried out the instructions of a valuable and powerful client, without ever questioning his motives or doubting the probity of his actions. It must be remembered that Goodfellow, at the time he testified, was facing disciplinary action by the Toronto Stock Exchange, and this may account for, but cannot excuse, the long series of bland but obvious falsehoods which he offered as answers to counsel's questions. Two months later, on August 18, 1966, he was expelled from membership of the Toronto Stock Exchange and his firm denied the use of its facilities, but he was permitted to sell his seat in January of the following year. Part of the exchange's "Note to Members No. 370", may be quoted:

"The Board of Governors found that the member had been a party to or assisted in creating an abnormal market condition in respect to the shares of Analogue Controls Inc., that in respect to certain information provided the Exchange the member attempted to mislead the Board of Governors; that the firm executed transactions in listed securities off the floor of the Exchange contrary to provisions of the Exchange by-laws.

It was also found that the firm arranged fictitious transactions as regards the registration of Commodore Business Machines Canada Limited shares.

As a result of the hearings, the Board found that the method of business was unbecoming a member of the Exchange and inconsistent with just and equitable principles of trade."

Sir Stafford Sands' Position

The exchange was unable to glean, in its inquiries directed to the Royal Bank, any knowledge of the identity of the customer of the Freeport branch for whose benefit all this perturbation had been caused; nor was the Royal Commission any more successful in receiving confirmation from the bank of what Morgan had already admitted in his own evidence until he, on his death-bed, gave his consent to the bank divulging this information. The evidence of Clennett was prefaced by a statement of Mr. C. F. H. Carson, Q.C., appearing on behalf of the Royal Bank of Canada, in which he set forth the difficulties faced by the bank, citing the principles enunciated in the well-known case of *Tournier v. National Provincial and Union Bank of England*,¹ to the effect that a bank is only relieved of its duty to keep its customers' affairs confidential in cases where (1) disclosure is under compulsion of law, (2) where there is a duty to the public to disclose, (3) where the interests of the bank require disclosure and (4) where the disclosure is made by the express or implied consent of the customer. The bank's dilemma under the first is illustrated by a letter dated January 10, 1965, but clearly written in 1966 because of the reference to the Banks and Trust Companies Regulation Act of 1965, which did not become law in the Bahama Islands until October 28 of that year, addressed to the General Manager (International Division) of the Royal Bank of Canada at its head office in Montreal by the Minister of Finance of the Bahama Islands in the following terms:

"Dear Mr. Shannon:

In response to your telephone inquiry this morning regarding giving information to another Government concerning the accounts of customers of your Bank maintained in branches of your Bank in this Colony, the provisions of section 10 of The Banks and Trust Companies Regulation Act 1965 apply only to officials of this Government. However, I should say that I and my Ministry would be most disturbed if any Bank carrying on business in the Bahama Islands were, directly or through any member of its staff, to disclose any information concerning the account of a customer maintained with a branch of that Bank within the Bahama Islands to any other Government. I, therefore, trust that your Bank will not disclose any such information concerning accounts maintained with your branches in this Colony to any other Government.

¹(1924) 1 K.B. 461.

If such a disclosure was made otherwise than on the order of a Court of competent jurisdiction in the Bahamas, this Ministry would have to give serious consideration to what steps should be taken to prevent a recurrence of such action by the offending Bank.

Yours faithfully,
 'Stafford L. Sands'
 Sir Stafford Sands,
 Minister of Finance."

This letter, a copy of which was furnished to the Commission by the bank's solicitors, written by a minister of the Crown who was, or was about to become a director of the bank in question while still in office, makes no attempt to enunciate policy based on the laws in force in the colony, but simply constitutes a naked threat to an institution contemplating compliance with the laws of another jurisdiction where it also does business. If C. P. Morgan had not survived to give, in the last stages of dissolution, a consent which relieved the Royal Bank of Canada of the need to choose between compulsion of law in Ontario and ministerial displeasure in the Bahamas, the duty of a Canadian chartered bank doing business in a well-known tax haven and, it must be said with deliberation, a notorious sanctuary for criminals, might well have been defined by the courts if the bank had maintained the position which it had hitherto adopted in relation to this Commission's order to disclose the identity of the customer who had used its name and its facilities to manipulate the market in the shares of Analogue Controls.

Results of Morgan's Trading

The results of Morgan's operations in this respect must now be assessed. After the suspension of trading Fred B. Adair and Morton H. Ruden attended a meeting at the Toronto Stock Exchange, at which Adair stated that Manhattan Sound Corporation still held its shares of Analogue Controls, and that he would inquire from Weinrott as to the position of the other shareholders. In due course the exchange received a copy of a telegram from the Bahamas addressed to Adair as president of Analogue, reading as follows:

"In answer to your call the investment group represented by me went into another major development requiring several millions of dollars and needed funds. They therefore sold a substantial portion of their holdings in Analogue to meet the request of their bankers.

George H. Leinrott"

This message is sufficiently characteristic to dispel any doubts as to its authenticity arising from minor errors in transmission.¹ Weinrott said in his evidence before the United States Securities and Exchange

¹Exhibit 2463, Appendix 5.

COMMODORE BUSINESS MACHINES

Commission taken on January 18, 1966² that he had never seen the 75,000 shares of Analogue Controls which Cimcony Limited had purchased, and the profits from which, on the assumption of a rise in the price of the shares to \$10 or \$12, would accrue to it, nor did he ever receive an accounting from Morgan. The complicated transaction, in the course of which these shares were paid for with \$300,000 of Cimcony Limited preference shares, has already been described as a means of raising \$500,000 with which to buy 120,000 common shares of Atlantic Acceptance from Hugo Oppenheim und Sohn in Berlin. Perhaps it is sufficient to say that the terms of Weinrott's telegram were dictated by those of his previous correspondence with the Toronto Stock Exchange which purported to disclose the identities of the major shareholders of Analogue Controls, and may in fact have been suggested by Morgan himself.

Two assumptions had to be made by Mr. Gillman in making his analysis of the trading by C. P. Morgan and Mortgage Trust & Savings through the Freeport account, based upon the evidence available at the time he testified, and the actual results, as has been suggested, and will be suggested again, must be forever wrapped in mystery. The analysis which he made was reduced to writing and entered in evidence,³ and appears below.

ESTIMATED PROFIT REALIZED FROM TRADING IN ANALOGUE CONTROLS INC.

by

MORTGAGE TRUST & SAVINGS (BAHAMAS) LIMITED AND C. P. MORGAN

based on the assumptions that

- a) Royal Bank of Canada was trading on their behalf and
- b) that N.G.K. shares were purchased by C. P. Morgan

PURCHASES

<u>Date</u>	<u>No. of Shares</u>	<u>From</u>	<u>Paid</u>
14 Sept. '64	332,000	C.B.M. (Canada)	
		Ltd.	\$ 485,550.00
20 Oct.	2,000	N.G.K.	nil
22 Oct.	1,100	market	4,510.00
26 Oct.	600	market	2,460.00
15 Dec.	2,300	market	12,132.50
31 Mar. '65	49,100	N.G.K.	269,376.00
	387,100		\$ 774,028.50

²Exhibit 2479.

³Exhibit 2444.

SALES

<u>Date</u>	<u>No. of Shares</u>	<u>From</u>	<u>Paid</u>
15 Oct. '64	75,000	Cimcony Limited	\$ 300,000.00
19 Oct. '64	75,000	Manhattan Sound	300,000.00
20 Oct. '64	2,000	D. Rush	nil
12 Feb.-18 May ..	203,000	Royal Bank	1,190,457.50
Unknown	10,000	S. J. Gould	40,000.00 (est.)
	<u>365,000</u>		<u>\$1,835,457.50</u>

\$1,835,457.50

774,028.50

\$1,061,429.00

plus 22,100 shares

Estimated expense based on assumptions that:

- a) excess over \$4.00 per share on 203,000 shares was paid as fee, and
 b) excess over \$4.00 per share on sale of 10,000 shares at $5\frac{1}{8}$ was paid as fee

a) Fee on 203,000 shares \$ 378,457.50

b) Fee on 10,000 shares 11,250.00

Total expense \$ 389,707.50

Gross Profit \$1,061,429.00

Less Expense 389,707.50

Net Profit \$ 671,721.50

Of this amount \$300,000 was paid by preference shares of Cimcony Limited of that par value.

Estimated net position, based on the foregoing assumptions, is, therefore, that Mortgage Trust & Savings (Bahamas) Limited and C. P. Morgan or their respective assignees held, at the end of this transaction, free of all expense, the following:

Cash \$371,721.50

Shares of Cimcony Limited,

par value \$300,000.00

Shares of Analogue—free 22,100

The assumption that everything received over \$4 per share was paid as a fee was made to make all sales consistent with the \$4 per share price paid by Cimcony Limited and Manhattan Sound Corporation. The appearance of the name S. J. Gould as a purchaser of 10,000 shares for an estimated \$40,000 requires some comment. Stanley J. Gould was known to Morgan as an associate of Jack Tramiel, and was at one time on the payroll of Commodore Business Machines for which he was supposed to do promotional work. This consisted of finding possible acquisitions for the company and for a president whose acquisitiveness was a salient characteristic. Morgan ruefully complained that

Tramiel would never discuss investment with him until all the details had been arranged, and would only appear on his doorstep when money was needed. He believed that Tramiel and Gould planned to go into the brokerage business in New York, and he remembered having met Gould as a travel agent on one of his visits to Grand Bahama Island under circumstances which strongly suggest the latter was acting as a conductor of parties of gamblers flown to the casino at the Lucayan Beach Hotel, an activity which is now known to have been promoted by the underworld. Morgan said further that Gould got his 10,000 shares at the same price as was fixed for Kaftel's "option", which would be \$3.50 per share. Tramiel said that Gould was a "customer's man" and a "finder", and that he had become very friendly with him. In his evidence to the Commission he said that Morgan and Gould were involved in some deal with Analogue stock but denied any knowledge of the details. Item (b), dealing with the expense of sales, refers to the 10,000 shares forwarded to the Banque Commerciale in Luxembourg at a price of $5\frac{1}{8}$, and the assumption is that, in this transaction also, everything realized above the price of \$4 per share was payable as a fee to Frank Kaftel. Were the lower ceiling of \$3.50 per share accepted in accordance with Morgan's sworn evidence, the net profit would be reduced by \$106,500 and the cash profit would be \$265,221.50. Both Morgan and Kaftel refer to figures of somewhat over 400,000 shares under Morgan's control, and this calculation may include an additional 30,000 shares bought by Manhattan Sound Corporation, the availability of which was not sufficiently clear to justify their inclusion among the assembled shares of Mortgage Trust & Savings and Morgan himself, which in the aggregate amounted to 387,400 according to Mr. Gillman's evidence. If Kaftel's recollection of his arrangement with Morgan is correct, and if they were to divide everything realized over a price of \$2.20 per share, Kaftel's entitlement to profit might have been much the same as if calculated on the basis of him receiving everything realized over \$4 per share. Indeed, if one takes the 203,000 shares sold from the Royal Bank account for \$1,190,457.50, from a value date of February 12 to a value date of May 18, 1965, half of the receipts over \$2.20 per share would amount to \$371,928.75, which is very close to the amount of cash estimated by Mr. Gillman to have remained in the hands of Morgan, together with \$300,000 worth of Cimcony Limited preference shares and 22,100 shares of Analogue Controls. Morgan said in his evidence that his own profit out of the trading, after paying Kaftel, paying off the Mortgage Trust & Savings loan from Aurora Leasing Corporation and paying what was owing to N.G.K. Investments, was about \$100,000, but he agreed that the profit made on the sale to Manhattan Sound Corporation of 75,000 shares at \$4 would be additional, less "certain interest that had to be paid". Whatever this may have amounted to, the gross profit on the sale to Manhattan Sound

would be \$191,250. Since the account at Freeport was used by Morgan for a number of transactions concerned, for example with the Lucayan Beach Hotel and others not related to the market operation in the shares of Analogue Controls, further comment on the status of this account, and the division of profits with Frank Kaftel, will be made in Chapter XVIII in the light of documents recovered by this Commission's investigators from the basement of Morgan's Toronto house, which were not available to the Commission when Mr. Gillman's evidence was given.

Concluding Observations on the Analogue Stock Manipulation

Some concluding observations may, none the less, at this point be made. It would be easy to criticize the actions of the Toronto Stock Exchange taken in connection with the change of control of Analogue, and the subsequent market operation conducted behind a screen erected in the Bahama Islands, if one were to forget the unruffled atmosphere prevailing in September 1964 when the special size transaction was first disclosed. Thereafter it was quite natural to assume that inquiries made by the exchange were being dealt with in good faith by those to whom they were directed, and it was not until the spring of 1965 that rumours of European buying, added to the difficulty of getting information from the company and its sponsors, caused the exchange to institute a quick examination by Mr. Lavender. On the strength of his verbal reports it acted quickly and decisively, in spite of the serious consequences which a suspension from trading visits upon the heads of beguiled and innocent purchasers. Even so, the exchange was able to derange the plans of Morgan and Kaftel, leaving the former with 22,100 of these shares on his hands which, had his plans materialized, would have been worth a large sum of money. As for Kaftel, the International Financial Advisory Service had shot its bolt with the twin fiascos of Commodore Business Machines and Analogue Controls, and his own involvement in a situation which, with the collapse of Atlantic Acceptance, became an international *cause célèbre*. On March 31, 1966 he was expelled from the Grand Duchy of Luxembourg by ministerial decree.¹

In his testimony before the Commission C. P. Morgan sought to leave the impression that he had taken the majority interest in Analogue Controls off the hands of Commodore Business Machines, and had disposed of the shares in the best way possible after making this conspicuous sacrifice. Nothing could be further from the truth. If it was a prudent decision on the part of Commodore Business Machines to dispose of an asset which was of doubtful value when it was acquired, it was equally true that Analogue was the sport of stock-market operators from the time when Annett & Co. decided to get their customers out

¹Commission file: Securities and Exchange Commission—letter from Ambassador of Luxembourg in Washington to Peter J. Adolph.

to the time when its shares were suspended from trading on the Toronto Stock Exchange. Morgan's acquisition of the shares, reliance on the Rush brothers to provide a theme for the enhancement of their value, on Barrett, Goodfellow & Co. and captive companies like N.G.K. Investments to support the market until the iron was hot, and finally on Kaftel to dispose of the glut of shares which he had carefully assembled, was deliberately planned, and the whole operation was carried out with the utmost secrecy and with unremitting attention to detail. Needless to say, it would have been impossible to contemplate it if Atlantic Acceptance Corporation and its subsidiary and associated companies had not been available, and at Morgan's disposal, to provide ready money on the most advantageous terms for the acquisition of Analogue shares by him and his nominees. All the money came from this source with the sole exception of a margin account with Barrett, Goodfellow & Co. for the benefit of N.G.K. Investments. That this far-flung assault on the optimism of the investing public, both at home and abroad, was not more successful in terms of cash in the hands of Morgan and Kaftel was due solely to the procedures developed and applied by the Toronto Stock Exchange, and to the resolution with which its officers finally acted when they found from which quarter the wind was blowing.

* * * *

Commodore Business Machines Buys Willson Stationers

The story of the involvement of Commodore Business Machines (Canada) Limited, and its subsidiary and associated companies, with Atlantic Acceptance would not be complete without some reference to the transactions in which that company was concerned during and after the Atlantic default. It will be appreciated that the relationship of Jack Tramiel with the German bank, Hugo Oppenheim und Sohn, and with the affairs of the Lucayan Beach Hotel, is yet to be examined in detail. None the less, a broad outline of the last days of the dependence of Tramiel and Kapp and their enterprises upon C. P. Morgan must be attempted. Certainly Morgan's tutelage had been a source of profit; in somewhat less than five crowded years they had risen from being, with their families, joint owners of a company with a capital investment of \$200 to a position in the summer of 1963 where they were able to dispose of half a million dollars worth of the common stock of Commodore Business Machines, valued at \$3.50 per share, and an account of their trading, and the opportunities which came their way to improve their position in a carefully contrived stock-market promotion, has been given at some length. But their attitude of respectful compliance with whatever Morgan suggested or decided to do was not entirely consistent with the affluence bestowed upon them, and, particularly in the case of Tramiel, this was observed to change. He testified that his only serious falling out with Morgan was over the latter's plans for the Lucayan Beach Hotel, and

his involvement of Tramiel in the problems of management. Morgan's wry comment about Tramiel using him only as a source of money has already been referred to. The truth appears to be that Tramiel's growing independence of Morgan led him to take an increasingly detached view of the latter's capabilities and judgment. The creation of Trans Commercial Acceptance and Baronet Associates, and the laying off of one and a half million dollars of the indebtedness of the Commodore Business Machines' group to British Mortgage & Trust, indirectly saved Commodore Business Machines from being overwhelmed in the Atlantic débâcle. To hear Morgan on this subject it was all arranged by Tramiel and Kapp at his expense, and Tramiel and Kapp say just as positively that every move they made was on Morgan's instructions. Both Morgan and Tramiel had a good deal of vanity in their make-up and saw themselves as empire-builders. It has been seen above how Commodore Business Machines acquired Pearlsound Distributors, Humber Typewriters, and, to almost the same extent, Analogue Controls by means which were concerted between Morgan, Tramiel and Kapp, largely to the exclusion of Medland, King and Gregory. A parting of the ways was bound to come, and it did come, as might be expected, when Morgan's grip on the situation had been loosened by his preoccupation with the plight of Atlantic Acceptance and his own peril.

The acquisition of the Willy Feiler concern had been a sure-footed and profitable move, and it had been greatly assisted by luck, because the correspondence between Solomon & Singer and their Berlin agents, in the course of closing the transaction in May, 1963, shows quite clearly Herr Feiler's paternal feelings for Jack Tramiel had been strained to the limit by his discovery that an audit taken after the price of D.M. 4,000,000 had been agreed upon showed it to be much too low, and by Tramiel's drawn-out haggling over Feiler's contract of employment for the future. The acquisition of Willson Stationers & Envelopes Limited was of another order. This company was the largest retailer of stationery and office supplies in Canada. From the correspondence it appears that negotiations to purchase the controlling interest in this company from Lawson & Jones Limited of London, Ontario were begun in March 1965, and minutes of a meeting of the board of directors of Commodore Business Machines, dated April 7, at which all the directors of the company, Messrs. Morgan, Tramiel, Kapp, King, Solomon, Medland, Wagman, Goodfellow and Gregory were reported as being present, contained the following reference to the proposed purchase:¹

"The President advised the Company that Willson Stationers & Envelopes Limited has sales of approximately \$11,000,000 in Canada and should show a net profit after taxes of about \$275,000 for its fiscal year ended April 30, 1965. He advised the meeting that Willson Stationers &

¹Exhibit 343.

Envelopes Limited had recently hired a top executive formerly employed with the Eversharp company and he presently was presiding over the day-to-day affairs of Willson Stationers & Envelopes Limited.

The President further reported that Willson Stationers & Envelopes Limited would be acquired for its book value as set forth on its financial statement of April 30, 1965, to be ascertained. He estimated the purchase price at book value to be approximately \$5,000,000. However it further appeared that a large portion of the surplus of Willson Stationers & Envelopes Limited, being in the vicinity of \$2,500,000 would be distributed by Willson Stationers & Envelopes Limited to its present shareholders prior to the acquisition of the shares by this Company. In summary, therefore, he reported that the actual purchase price to the Company of the shares would be in the vicinity of 2½ to 3 million dollars.

UPON MOTION made, duly seconded and unanimously carried IT WAS RESOLVED THAT a committee be appointed composed of Messrs. King, Morgan, Tramiel, Gregory and Medland for the purpose of determining ways and means of raising sufficient funds for the Company to enable them to purchase the said shares of Willson Stationers & Envelopes Limited, AND IT WAS FURTHER RESOLVED that this committee, in their discretion, upon satisfying themselves that such purchase price could be raised by the Company, be authorized to permit the Company to enter into a transaction for the acquisition of the shares of Willson Stationers & Envelopes Limited, as in their discretion they may determine."

These minutes, as they appear in the book, are unsigned. Tramiel testified that both Morgan and Gregory had assured him that the money to complete the transaction would be forthcoming; Morgan denied that he had ever given such assurance. According to Medland, Morgan had made the same statement to him, and there can be no doubt that Tramiel was encouraged to think that Commodore Business Machines would be supplied with Atlantic funds as heretofore. The various instruments necessary to conclude the transaction were signed on April 22 with a deposit of \$100,000 being made on that day. Both King and Medland said on oath that they were opposed to this purchase for the reason that they thought the necessary funds too difficult to raise and the expenditure unjustified, and additionally in the case of Medland, because Willson Stationers was having trouble of its own. Medland said that the \$100,000 payment was made before he, as a director, had been consulted and King, when he read in the newspaper that the acquisition was to be proceeded with at a time which he thought was shortly after the Atlantic default, sent in his resignation. In any event, by the end of May it was clear that neither Atlantic Acceptance nor British Mortgage & Trust were in a position to accommodate Commodore Business Machines any further, and what Medland had described as an "emergency meeting" of the directors was held on June 3, at which time, according

to the record, Tramiel was authorized to make efforts to obtain \$3,000,000 from any source at an interest rate of up to 15% per annum. King is not shown as being present at this meeting; Medland is, and according to his evidence strongly urged the board to forfeit the \$100,000 deposit and not to proceed further. On June 9 another meeting was held which Medland was unable to attend, but in connection with which he telephoned the office of Solomon & Singer, speaking either to Carl Solomon or Irwin Singer, and asked for his opposition to the purchase of Willson Stationers to be recorded in the minutes. At this meeting, said to be attended by all the directors except King and Medland, approval was given to borrowing \$3,000,000 from Traders Realty Limited for six months at an interest rate of 11%, and in neither the minutes of this, nor of the meeting of June 3, is any mention made of Medland's opposition. The meeting was adjourned to June 11, at which time it reconvened with only Tramiel, Kapp, Solomon, Goodfellow and Wagman being present, and a draft agreement with Traders Realty Limited, containing a provision that all the shares of the Willy Feiler company should be transferred to Willson Stationers, was given approval. At a further meeting on June 22 the resignations of Morgan, Medland, Gregory and King were formally accepted, the board being subsequently reduced in number from nine to five. On this occasion, after the collapse of Atlantic Acceptance and in an atmosphere of impending disaster, Tramiel and Kapp tightened their grip on the situation by obtaining five-year employment contracts at salaries of \$30,000 and \$25,000 respectively, and options for each to purchase 50,000 shares of the company at \$3 per share, the latter as recompense for giving their personal guarantees of repayment to Traders Realty Limited for which, in addition, they obtained covenants of indemnification from the company and were, according to Tramiel's evidence, paid 3% of the amount of the loan.

Tramiel's Use of 75,000 Atlantic Shares

What is in many respects part of a more elaborate transaction relating to the affairs of Atlantic Acceptance and Hugo Oppenheim und Sohn was the requirement of additional collateral security by Traders Realty, which took the form of 75,000 shares of Atlantic common stock. Tramiel testified that in his desperate search for \$3,000,000 with which to complete the transaction with Lawson & Jones he had employed Wolfgang Wirth, the German bank's manager, to raise all or part of this sum in West Germany. These shares, a part of 120,000 purchased by Hugo Oppenheim und Sohn, were thereafter sold to Cimcony Limited in Nassau on terms that transferred 38,500 shares outright to the purchaser and granted an option to it to buy the remaining 81,500 shares, according to the English version of the contract, or sold them and postponed payment in return for interest on the unpaid balance for a period

of five months, according to the German version. A detailed examination of this arrangement must be made in the proper place,¹ since all the shares were retained as security under the agreement by Hugo Oppenheim und Sohn. Tramiel gave evidence of an understanding with Wirth that the shares would be transferred to the bank's Canadian subsidiary, Hugo Oppenheimbank (Canada) Limited, to avoid payment of the withholding tax of 15% on dividends payable on these shares to which Cimcony Limited was expressed to be entitled. According to Wirth,² Tramiel himself carried the shares back to Canada, and an agreement between Tramiel and the bank dated July 1, 1965 lists 111,900 shares of Atlantic Acceptance as being in the possession of Hugo Oppenheimbank (Canada).

These certificates were in street form, and once in Tramiel's hands were used in more than one transaction, but in no case in a more spectacular manner than when making possible the acquisition of Willson Stationers. In Solomon & Singer's files was found an original executed agreement³ between Hugo Oppenheimbank (Canada) Limited and Jack Tramiel and Manfred Kapp, reciting that the company as vendor was the owner of 75,000 common shares of Atlantic Acceptance, and providing for the sale of these shares to Tramiel and Kapp for \$1,500,000 or \$20 per share, to be paid for by a promissory note due March 14, 1966, and bearing interest at 6% per annum, and subject to a put option contract binding the company to repurchase the shares at any time before the due date for the same price. The date of the agreement was June 11, 1965, and the date of closing June 14; dividends payable on the shares were to be paid to the company and offset against the indebtedness of Tramiel and Kapp to it, after and excluding those payable on June 15. The agreement, which is signed for the vendor by Tramiel and F. S. Draper, contains a warranty that it is the owner of the Atlantic shares, and that they are free and clear of "all liens, charges and encumbrances of every nature and kind whatsoever". They were, of course, in no such condition, being subject to the right of Cimcony Limited to compel delivery upon completion of its contract of purchase and sale concluded with the vendor's parent company in Berlin under which, in addition, the dividends accrued to the purchaser. Another document from the same source is an original and executed consent in the following terms.⁴

"To: Hugo Oppenheimbank (Canada) Limited

The undersigned shareholder of Hugo Oppenheimbank (Canada) Limited, hereby consents to the sale by the Company to Jack Tramiel and

¹Chapter X.

²Commissioner's notes on conversations in Germany.

³Exhibit 997.1.

⁴Exhibit 997.2.

Manfred Kapp of 75,000 common shares in the capital stock of Atlantic Acceptance Corporation Limited, at the price of \$20.00 (Canadian) per share, in accordance with the terms and conditions of an Agreement dated June 11, 1965.

Dated this 11th day of June, 1965.

HUGO OPPENHEIM und SOHN Nachf.,
BERLINER PRIVATBANK, A.G.

Per: 'Wolfgang Wirth'

Per: 'Werner Lange' "

The figure "11", occurring in the phrase "dated this 11th day of June, 1965", has been substituted for one underlying it which is not legible. Tramiel, who had obtained this precious document only eighteen months before he gave evidence, was quite unable to recollect at what time it had been executed in Berlin, or under what circumstances he had brought it back to Canada, except by subsequent reference to his passport, upon which appeared a stamp indicating departure from the Tempelhof Aerodrome on June 11. His inability to remember the chronology of these events and the details of any conversation with Wirth, whereby the latter was persuaded to alienate \$1,500,000 worth of stock which, in the event of payment by Cimcony Limited, he would have had to buy in the open market for his bank to make good its contract, is by no means credible; nor is it possible to conclude that the agreement with Traders Realty,⁵ dated June 10, whereby Tramiel and Kapp bound themselves to produce as owners, free and clear of all encumbrances, 37,500 shares each of Atlantic Acceptance stock, the agreement between Hugo Oppenheimbank (Canada) and the consent of Hugo Oppenheim und Sohn had all been executed in the space of two days. Tramiel, indeed, admitted that the agreement with Hugo Oppenheimbank (Canada), and the consent of its parent company, were not executed on the same day. Both documents were without doubt drawn in the office of Solomon & Singer, the latter taken to Berlin beforehand by Tramiel. To pursue the matter further would be tedious, but it may suffice to say that Tramiel and Kapp, at a profit to themselves, were able to secure the vital loan from Traders Realty to Commodore Business Machines on terms which exposed Hugo Oppenheim und Sohn to ruin. Morgan said that he heard "by the grapevine" of the appearance of the 75,000 shares as collateral in the Willson-Commodore Business Machines-Traders Realty transaction while attending a directors' meeting, presumably of Atlantic Acceptance, and that Medland had phoned either Solomon or Tramiel to protest and to demand that it proceed no further. He was told in reply that Tramiel and Kapp were lawful owners of the shares. Medland made no mention of this, and Morgan may have

⁵Exhibit 3420.

confused it with Medland's earlier intervention on the subject of Willson Stationers, but Morgan was always sensitive about the appearance in unexpected places of Atlantic stock, and there is no doubt about his concern on this occasion.

The purchase of Willson Stationers was concluded on June 23. One of its aspects must be shortly referred to. Fenix Manufacturing Limited was a company subsidiary to Commodore Business Machines, and on this occasion played its brief part in the affairs of the complex. It was a private company, incorporated in Ontario on September 25, 1963, with a share capital not exceeding \$40,000 of which three common shares, valued at \$1 each, had been issued to Irwin Singer, Morton Goldhar and Patricia Ann Weir. Its stated objects indicated that the company was intended to be a manufacturer and importer of high fidelity phonographic equipment and other related products. By February, 1965 the three directors were Singer and two employees of Commodore Business Machines, Hans Vogt and F. S. Draper. No business was carried on by the company until June 21, 1965, when its capital was increased by letters patent adding 3,600 preferred shares at a par value of \$10 each and 4,000 common shares without par value, and it thereupon acquired complete ownership of Willy Feiler Zaehl-und-Rechenwerke GmbH from Commodore Business Machines. Payment was made by the issue of 3,997 shares of Fenix to Commodore which were assigned a value of \$880,100. Then, on June 23, Willson Stationers bought the same number of shares of Fenix from Commodore Business Machines for a stated price of \$3,000,000, pledging the shares in payment, and Commodore Business Machines in turn pledged them with Traders Realty, together with a \$3,000,000 debenture, bearing interest at 11%, issued by Willson Stationers to Commodore Business Machines, and a mortgage of real estate owned by Willson Stationers and its subsidiaries. In addition to this security Traders Realty, of course, had the note of Commodore Business Machines, 75,000 shares of Atlantic Acceptance and all the shares of Willson Stationers in pledge, a release and reconveyance from the Montreal Trust Company with respect to the charge and obligations of Commodore Business Machines under the trust deed securing the Series A debentures of November 1962, and warrants to purchase 10,000 common shares of Commodore Business Machines, not as security but as an absolute transfer. Traders Realty was, as it turned out, amply secured, but its officers must have had some bad moments with their shares of Atlantic Acceptance, which, when the terms of the loan were settled on June 10, were one thing, and by the date of closing of the purchase of Willson Stationers on June 22 quite another. Apparently Fenix Manufacturing was only interposed between Willy Feiler and Willson Stationers to avoid any possible taxation in West Germany on the transfer of ownership in Willy Feiler.

The Atlantic Crisis and its Effect on Commodore Business Machines

The directors of Commodore Business Machines, meeting on June 22, are recorded in the minutes as discussing ways and means of withdrawing from the agreements with Lawson & Jones, and being advised by their solicitors that this was impossible. The prospect of raising \$3,000,000 in six months' time without losing Willy Feiler, their prime asset, and meeting, as they fell due, the obligations of the company, represented by its debentures, preference shares and loans from companies, control of which had been rapidly assumed by Montreal Trust Company and the Clarkson Company Limited, was enough to shake the stoutest heart. After the palmy days of doing business on the elastic terms afforded by the Atlantic companies under Morgan's direction, the terms as to security imposed by Traders Realty provided a sharp lesson in business conducted at arm's length. Blocking every avenue of escape from the consequences of Jack Tramiel's thirst for expansion, so recently slaked by Carl Solomon's persuasiveness in the conference rooms of Traders Group, lay the massive claims advanced by the Montreal Trust Company for Atlantic on the one hand, and on the other by British Mortgage & Trust Company, soon to be made formidable by its amalgamation with Victoria and Grey. Willson Stationers & Envelopes Limited must be disposed of at all costs, even if this established Canadian company, stripped of half its surplus, were put on the block for the highest foreign bidder.

It is impossible not to admire, at this juncture, the resolution of Tramiel and Kapp, as they gazed in the summer of 1965 on the collapse of all their calculations and the ruin of their hopes. As will be subsequently seen, Tramiel was at the same time in serious trouble in Berlin. Wolfgang Wirth of Hugo Oppenheim und Sohn, who had little love for him and his associates, describing them as the "Canadian bandits", could not refrain from expressing to the Commission his admiration of the coolness and even temper with which Tramiel faced the outraged central banking authorities of the Federal Republic. This was not, and probably never had been the man who appeared, on his own showing, to be the dutiful and helpless instrument of Morgan's schemes. An interesting sidelight on his behaviour is cast by the evidence of one Max Block Jr., an American attorney acting in the interests of Robert Quinn, new general manager of Analogue Controls Inc., who came to Toronto with his associate Stern to persuade Morgan to release funds from Baronet Associates which would allow Analogue to meet its payroll. Morgan appealed to Tramiel, and Tramiel's refusal was adamant. Block's impression, given at his examination by the Securities and Exchange Commission in New York, was that Tramiel was the master and Morgan the suppliant.¹ Tramiel himself testified that Morgan asked him to have Trans Commercial Acceptance release the securities pledged with it by Analogue, saying

¹Exhibit 4067.

that he was working closely with the Montreal Trust Company; Tramiel decided that Morgan was a broken man, and that, as he himself put it with more delicacy, no confidence could any longer be placed in his judgment. Thereafter, he said, his whole concern was to get assets of Trans Commercial Acceptance and Baronet Associates into the hands of the Clarkson Company. It was otherwise with those of the company which he rightly estimated to be his real strength and his hope for the future. The minutes of the meetings of directors of Commodore Business Machines, and Tramiel's report to its shareholders in the annual report for the year ended June 30, 1965, are full of comments about the "harassment" of the company by its creditors.

Irving Gould and the Sale of Willson Stationers

The first objective was to sell Willson Stationers. The resolution to do so was taken at a meeting of the board of Commodore Business Machines on August 10, 1965, a meeting at which a further option to buy 50,000 shares of the company's common shares, at the reduced price of \$2 a share, was granted to each of Tramiel and Kapp in consideration of their giving their personal guarantees of the company's indebtedness to Traders Realty Limited. A document dated August 13, 1965, executed by Tramiel and Kapp for Commodore Business Machines, gave Amber Holdings Limited, of Nassau in the Bahamas, an exclusive agency to sell the company's 49,000 shares of Willson Stationers, and to retain any excess over \$3,000,000 of the purchase price as its commission. Amber Holdings was a company created and controlled, for the benefit of members of his family, by Irving Gould, president of Superpack Corporation Limited and Jaypen Holdings Limited, the latter being a moneylending enterprise. Gould said, in his examination under the Securities Act by Mr. Shepherd and Mr. Cartwright,¹ that he had first met Tramiel in July or August of 1965 and had discussed the situation and prospects of Commodore Business Machines with him. The agreement as to the commission of Amber Holdings, and the financing which now ensued by Jaypen Holdings, provide a measure of the desperate situation in which Commodore Business Machines found itself. On August 10 a loan of \$20,000 was made by Jaypen Holdings and repaid one month later. On August 31 a loan of \$100,000, repayable in 90 days, was provided from the same source. At a meeting of the board held on August 26 a special resolution was passed to rescind the section in the company's general by-laws permitting the shareholders to remove a director before the expiration of his term of office by two-thirds of the votes cast at a general meeting; the request of W. A. Farlinger of the Clarkson Company that a nominee of the Montreal Trust Company should be appointed to the board, and that he should be allowed to inspect the books and records of the company, was rejected on the advice of the president. An extract from this minute is worth quoting.

¹Exhibit 3699.

"In view of the adverse publicity already surrounding the Company with respect to its alleged connection with Atlantic Acceptance Corporation Limited, and in view of the knowledge that Montreal Trust Company and The Clarkson Company Limited have the role of Receivers in connection with Atlantic Acceptance Corporation Limited, public knowledge that Montreal Trust Company or The Clarkson Company Limited were either investigating the affairs of Commodore Business Machines (Canada) Limited or that their representatives sat on the Board of Commodore Business Machines (Canada) Limited would further create adverse publicity for this Company and perhaps have the effect of projecting in the minds of the public the idea that Commodore Business Machines (Canada) Limited was in shaky financial condition."

The irony of this statement would not be appreciated by the public until March 9, 1966, when the financial statements of Commodore Business Machines for the year ended June 30, 1965 were at length furnished, virtually at pistol-point, to the Canadian Stock Exchange.

Irving Gould wasted no time in finding a buyer for Willson Stationers & Envelopes. He was spurred on by the knowledge that default had already occurred under the \$3,000,000 floating charge debenture given by Willson Stationers to Commodore Business Machines and assigned to Traders Realty, and that the appointment of a receiver was imminent. By undertaking to pay \$100,000 to the New York City brokerage firm of Shearson, Hammill & Co., he arranged a sale of all the shares of Willson Stationers owned by Commodore Business Machines at a price of \$67 a share, in accordance with the terms of a draft agreement dated September 8, to an American company, Boise Cascade Corporation. The offer was accepted at a directors' meeting on October 1, the same day as Harry Wagman's resignation from the board, and the transaction may be illustrated, in the first place, by a statement of receipts and disbursements sent by Solomon, Singer & Solway to Commodore Business Machines dated November 3, 1965.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

Total sale price (49,932 shares at \$67.00 per share):		\$3,345,444.00
Paid to discharge Traders Realty Limited loan:	\$2,962,239.02	
Paid Traders Realty Limited interest for October 4, 1965:	887.38	
Paid Arthur Andersen & Co., as per direction:	21,500.00	
Paid Borden, Elliot, Kelley & Palmer as per direction:	21,445.31	
Paid to Amber Holdings Limited as per direction: Selling Commission	339,280.00	3,345,351.71
OUR TRUST CHEQUE ENCLOSED HEREIN:	\$	92.29

COMMODORE BUSINESS MACHINES

The records of the Solomon & Singer trust account for Commodore Business Machines indicate that the amount of \$339,280, described as "selling commission", was paid to Shearson, Hammill & Co. in respect of \$100,000, Commodore Business Machines, \$162,000, treated as a loan from Jaypen Holdings, Jaypen Holdings itself, \$14,280 and Solomon & Singer, \$63,000 for fees and disbursements applicable to the purchase and sale of Willson Stationers, the last being a very considerable payment by any standards, and, since this document was used for audit purposes, studiously concealed. This sum was also treated as a loan to Commodore Business Machines by Jaypen Holdings. According to Gould, Jaypen Holdings owed \$225,000 to Amber Holdings in respect of these advances.

Tramiel's statement to the shareholders of Commodore Business Machines in the report for the year ended June 30, 1965 contains the following comment on the purchase and sale of Willson Stationers: "Though in the final analysis a loss was sustained, we would point out that the sale price was in excess of the purchase price, the loss being attributable to expenses of acquisition and sale". The cost of acquisition was \$3,084,353, and the proceeds of the sale, as indicated above, were \$3,345,444. Although these figures would appear to produce a difference of \$261,091, note 2(c) to the consolidated balance sheet contains the following comment: "This company was sold subsequent to balance sheet date. As a result of the sale, a loss of \$117,322 was sustained". The company's loss was in fact far greater, and is illustrated by the following calculation of cost made by Mr. Wolfman.

Costs of Purchase

Commissions paid on acquisition to Kalesky (broker)	\$ 87,500.00
Fee paid to Arthur Andersen & Co.	21,500.00
Payment to Jack Tramiel—for C.B.M. warrants to bonus Traders	20,000.00
Payment to Manfred Kapp—for C.B.M. warrants to bonus Traders	20,000.00
Canada Trust Co.—Depositary fees	4,347.10
Fees of Solomon and Singer (\$5,000 of this does not appear in the S. & S. Fee Register)	40,668.28
Fees of Solomon and Singer—Agents Costs	2,405.87
Fees of Wagman, Fruitman & Lando	50.00
	<hr/>
	\$196,471.25

Cost of Holding

Interest paid to Traders	\$100,441.39
Less: Interest earned on charges to Willsons	93,123.29
	<hr/>
	7,318.10
Interest charge re guarantee of Traders loan re Atlantic Shares (75,000)	31,067.82
	<hr/>
	\$38,385.92

Cost of Sale

Legal Fees of Solomon & Singer	\$ 15,000.00		
Legal Fees of Borden, Elliot & Co.	21,445.31		
Commission to Amber Holdings Limited			
Paid to: Shearson,			
Hammill & Co.	\$100,000		
C.B.M.—re Jaypen			
Loan	162,000		
Solomon & Singer—			
re Jaypen loan	63,000		
Jaypen Holdings ..	14,280	339,280.00	375,725.31
<hr/>			
Total Costs of Acquisition & Sale less recovery			
from Willson			<u>\$610,582.48</u>

The payment of \$20,000 to each of Tramiel and Kapp for the surrender of their warrants to purchase shares of Commodore Business Machines, to provide the required bonus for Traders Realty, which could only be justified by the holders exercising them at a price of \$8 per share, appears to be indefensible, but is completely in tune with the constant harping, in the minutes of the meetings of the board, on the sacrifices made by the president and vice-president in giving their personal guarantees of repayment of the loan of \$3,000,000 made by Traders Realty Limited, a gesture which was merely a pledge of diligence, and exposed them to no more than the absolute ruin which already stared them in the face. The investment in Willson Stationers, in the teeth of everything which could be called independent advice and solely at the instance of Jack Tramiel, was disastrous for the shareholders of Commodore Business Machines, but had two positive results: it enriched Tramiel and Kapp to an extent which is even now unfolding, and it delivered the future of the company into the hands of Irving Gould. Of Irving Gould it had been said, in words attributed to Tramiel in the minutes of a directors' meeting of August 26: "Because of that Broker's connections in the foreign financial markets and further because in his opinion the representative of the brokerage firm was a most highly respected and reputable person, it would be in the company's best interest to secure the friendship of that person and in order to do so it was necessary to grant the exclusive rights to sell the shares of Willson Stationers and Envelopes Limited to that Broker." It must also be said, in the public interest, that on January 20, 1960 he pleaded guilty to a charge of perjury arising out of a knowingly false statement, made on oath to the Ontario Securities Commission in the course of an investigation of a company called Cabanga Investments Limited. It should be added that every consideration was given to the accused because he had lied to protect his brother, subsequently sentenced to a long term in the penitentiary, and had

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admitted doing so. He was permitted to plead guilty in the obscurity of the magistrate's chambers, and sentence was suspended.

On the morrow of the sale of Willson Stationers, Tramiel wrote the following letter to Gould's company, Amber Holdings, dated November 8, 1965. The original spelling has been preserved.

"Gentlemen:

As you are aware, the sale of Willson Stationary and Envelopes Ltd. has been consummated successfully and, again, we would like to indicate our appreciation for the expeditious manner in which this transaction was carried out.

This of course does not put an end to our financial problems, and, accordingly, we are writing to you at this time to indicate our wish for you to proceed to negotiate any of the following types of transactions for the company:

- (1) Re-financing of the present indebtedness.
- (2) Additional financing over and above the present indebtedness.
- (3) Sale of all or part of the assets of the Company.

On the basis of your efforts resulting in any successful conclusion to any of the foregoing, we would pay you a fee of 2¼ % of the total amount involved on each transaction.

We trust that you will make your best efforts to ensure that the loan of \$325,000.—which is presently outstanding to Jaypen Holdings Limited will be maintained until such time as the Company has sufficient funds to repay this indebtedness.

Yours very truly,

COMMODORE BUSINESS MACHINES (CANADA) LTD.

JACK TRAMIEL
President"

Sale of Willy Feiler and the Irish Operation to Litton Industries, and Settlement with Victoria and Grey Trust Company and Montreal Trust Company

A special bank account was established into which all proceeds from the accounts receivable of Commodore Business Machines were paid, and for which Irving Gould had indispensable signing authority, since Jaypen Holdings had taken a general assignment of book debts to secure its various loans. In the spring of 1966 there occurred the climax of Gould's efforts, of which the tax-exempt Amber Holdings was again to be the beneficiary, when Litton Industries Inc. of New York agreed to purchase the Willy Feiler company, still held by Fenix Manufacturing Limited, the interest of Commodore Business Machines in its agreement with Office Electronic Machines Limited, a new name for Typewriter Sundries Limited, bestowing the exclusive right to distribute in North America the Willy Feiler or "Quick" adding machine, and the under-

taking of Commodore Industries Limited at Shannon in Ireland, for a price of almost \$3,800,000; the whole transaction was made contingent upon a settlement with Victoria and Grey Trust Company and the Clarkson Company Limited. This offer was considered of sufficient importance to require submission to a special general meeting of shareholders, to be held in conjunction with the annual meeting on April 26, 1966, at which time and at long last the financial statements for June 30, 1965 were also presented; one, as it were, offsetting the other. The minutes of a meeting of the directors of Commodore Business Machines, held on April 11, 1966 and attended by all the directors of that date, Tramiel, Kapp, Solomon and Goodfellow, set out the terms of the settlement with the two trust companies and the Clarkson Company in the form of resolutions taken at the meeting. With respect to Victoria and Grey the relevant resolution was as follows:

“BE IT RESOLVED THAT:

1. The entering into by the Company of an agreement with Victoria and Grey Trust Company dated April 7, 1966, (an executed copy of which is to appear as Schedule ‘C’ to the minutes of this meeting) providing, among other things, for the sale by Victoria and Grey Trust Company and the purchase for cancellation by the Company of Series A Debentures in the aggregate principal amount of \$50,000, Series B Debentures in the aggregate principal amount of \$450,000, Series C Debentures in the aggregate principal amount of \$500,000, the Subordinated Notes in the aggregate principal amount of \$950,000 and 94,000 Preference Shares with a par value of \$10.00 each, for the aggregate purchase price of \$1,500,000 and the issue and allotment to Victoria and Grey Trust Company of 50,000 fully paid and non-assessable common shares of the Company, all on the terms and conditions set out in the said agreement, be and the same is hereby approved, ratified, sanctioned and confirmed and the action of Mr. Kapp, the Secretary of the Company, in executing under the corporate seal of the Company and delivering the said agreement be and the same is hereby approved, ratified and confirmed.
2. Forthwith upon the closing of the agreement with Victoria and Grey Trust Company, the Company do and it is hereby authorized to redeem all its then outstanding Debentures, Subordinated Notes and Preference Shares in accordance with the provisions relating to redemption of the respective securities.”

As a supplement to this agreement, Tramiel and Kapp advised the meeting that Victoria and Grey had agreed to sell to them, or their nominees, 135,778 $\frac{5}{20}$ common shares of the company at a price of \$1.50 per share, and to give them an option to buy the 50,000 common shares allotted to the trust company for the same price, within a year from the date of the agreement. The claims of the Montreal Trust Company and

the Clarkson Company were settled by the payment to them jointly of the sum of \$600,000, and the purchase from the latter of 104,930 common shares for \$1.50 per share, the latter transaction being a condition of the settlement. In rounded figures, therefore, and subject to minor adjustments, the company was able to settle the substantial claims of Victoria and Grey Trust Company, and to redeem \$3,890,000 worth of debt and equity instruments, for an expenditure of only \$1,575,000. In addition, Commodore Business Machines was able to settle the large actual and contingent claims of the receiver and manager of Atlantic Acceptance, and of the Clarkson Company as trustee in bankruptcy for many of its creditors, amounting potentially to \$4,575,000 or thereabouts, for \$600,000. At the same time the board of Commodore Business Machines was induced to make a payment in excess of \$30,000 to secure Tramiel and Kapp against any further claims by the trust company for the unpaid balance of their personal loans, not affected by the discounted rate of the general settlement. The shares which Tramiel and Kapp were obligated to purchase were paid for with the commission earned by Amber Holdings for disposing of the Willy Feiler and Commodore Industries Limited assets, plus additional moneys, involving a total of over \$230,000 according to Irving Gould's evidence, and apparently, by addition of the foregoing figures, 240,708 shares. The actual purchaser was Irving Gould's other company, Jaypen Holdings, which thereupon became indebted to Amber Holdings for the purchase price advanced. Tramiel and Kapp were given an option to purchase half of the shares so acquired, not yet exercised at the time Gould gave his evidence on July 20, 1966. In the upshot, and in accordance with the agreement of Victoria and Grey Trust Company, all the debentures, preference shares and subordinated notes of Commodore Business Machines were forthwith redeemed, to a face value of \$3,864,500, for \$2,530,000 in cash.

This brief and somewhat cursory account of the extrication of Commodore Business Machines from the perilous situation in which it had found itself as a result of the purchase of Willson Stationers & Envelopes Limited, contemporaneously with the collapse of Atlantic and the disappearance of British Mortgage & Trust Company as it was formerly constituted, may be concluded by saying that on October 28, 1966, Irving Gould and his nominee David Perlmutter, C.A. became directors of Commodore Business Machines, and Gould in addition became chairman of the board and chief executive officer of the company. In the interim and thereafter Tramiel and Kapp turned away from their previous preoccupation with Central Europe, and sought manufacturing facilities and long-term financing from Japan with the assistance of another Gould company situated in Nassau, entitled Geneva Trust Company Limited. At the time of writing, the price of Commodore Business Machines stock is once more advancing on the Canadian Stock Exchange, and there is every sign of the organization of a market to relieve the company's prin-

cial officers of the large accumulation of common shares in their hands, or subject to options in their favour. The materials which have been referred to were, in many instances, not entered as exhibits in the public hearings of the Commission, since these were not principally concerned with events which occurred after June 17, 1965, but are contained in the files of the Commission. The history of Commodore Business Machines was for so long part of the story of Atlantic Acceptance Corporation, and its protagonists Jack Tramiel and Manfred Kapp so closely associated with C. P. Morgan, that no final comment should be attempted here. The affairs of the company, its subsidiary and associated companies, and their principals and employees, must be repeatedly referred to in later chapters of this report.

CHAPTER IX

Lucayan Beach and Dalite

I

The Bahama Islands

Of the multitudinous transactions of Atlantic Acceptance Corporation examined by the Commission, many of which, although resulting in substantial loss, must be only briefly referred to, none was more considerable than that which involved it in the affairs of Grand Bahama Island. Grand Bahama is one of the largest and most northerly of the Bahama Islands, which lie over a great expanse of ocean to the east and south of the Florida peninsula of the United States. With the exception of the tiny island of Bimini, it is the closest of the group to continental America, its westerly tip being less than 75 miles from Palm Beach to the west, and some 120 miles from Miami to the south-west. For this reason, Grand Bahama, with its few inhabitants at the settlement of West End, played a prominent part in the rum running activities which sprang up during the period when the Eighteenth Amendment to the Constitution of the United States was in force, and which enriched residents of other inhabited islands of the archipelago as well. The illicit trade was doubtless a tame successor to those of piracy and wrecking which had made the islands infamous since the seventeenth century, and it is to be doubted if anything like the profits made in Canada during the same period, and out of the same trade, were made in the Bahamas. None the less, connections with the largest organized criminal community in the world were inevitable after this experience of the convenience of "off-shore" operations, and are now a factor to be reckoned with in the field of licensed gambling. In this chapter of the report I shall endeavour to show how Atlantic Acceptance, beginning in 1963, was progressively involved with developments in Grand Bahama Island and with the private empire of one Wallace Groves, founder and protagonist of Grand

Bahama Port Authority, so that, at the time of the collapse in 1965, upwards of \$11,000,000 of its money had been irrevocably committed in the form of loans upon security of demonstrably little value, or upon no security at all. This involvement, and the resulting loss of liquidity which developed towards the end of 1964 and in the early part of 1965, may be said to have been the proximate cause of Atlantic's failure, although it by no means lay at the root of the company's difficulties. It developed along familiar lines: C. P. Morgan actively participated by personal investment in the ventures to which loans were made, as if the problem of conflict of interest did not exist, and without the knowledge of his board of directors from whom the extent of the company's commitment, and his own private interest, were effectively and deliberately concealed.

The Bahamas are a British Crown colony, and have been governed directly by the Crown since 1784 when it acquired the interests of their South Carolinian proprietors, as a result of the great influx of Loyalist planters and their slaves after the American Revolution into the virtually uninhabited islands. The governor appointed by the Crown administered the colony through his Executive Council and the Colonial Secretary, a Colonial Office official, with a Legislative Council, a majority of the members of which he appointed, and a House of Assembly performing roughly the same function as did those of Upper and Lower Canada before the Act of Union in 1841. It was not until January 1964 that a new constitution was introduced giving executive responsibility to those local representatives who controlled a majority in the House of Assembly, or in other words establishing responsible government as it is now generally practised under the British parliamentary system. Only foreign affairs, defence and internal security remained in the governor's hands, and preserved in theory, if less absolutely in fact, the islands' colonial status. Although the new constitution provided a significant change in the law, for practical purposes the internal affairs of the colony had for many years been dominated by the United Bahamian Party, control of which was in the hands of the merchants and professional class of Nassau, the capital of the colony, on the island of New Providence. It would be unrealistic to suggest that this political party did not enjoy the support of large numbers of the overwhelmingly negro population of the Bahamas, although dominated by the white minority in whose hands the economic as well as the political mastery lay, but it is significant that in January, 1967 the Progressive Liberal Party, which had provided parliamentary opposition to the United Bahamian Party for several years, and was almost entirely negro in membership, defeated the ruling ministry and assumed power. The principal reason for the decline of public confidence in the United Bahamian Party was its handling of licensed gambling in the colony, and particularly on Grand Bahama Island.

Growth of Licensed Gambling

Gambling, or more specifically carrying on a lottery, or keeping a gaming house for purposes of gain, was an offence under the Penal Code of the Bahama Islands, but in 1939 the law was changed to allow the Governor-in-Council to issue certificates of exemption from its effect in special cases. Since 1920 a discreet and exclusive gaming house had been operated at the Bahamian Club in Nassau during the tourist season, and is still in operation on a less restricted scale. This had been tolerated by the authorities until another small establishment opened on the island of Cat Cay, and it became evident that the situation should be regularized without altering the general application of the existing law. No taxation was imposed upon the two concerns exempted, and gambling was confined by the terms of the certificates to visitors, and to those persons who were not born in the colony and were not gainfully employed therein. All further applications for certificates of exemption, and attempts to ameliorate the provisions of the Penal Code in relation to gambling, were rejected and discountenanced by the government, which was supported in this negative policy by public opinion, particularly as represented by the clergy and the press, until on April 1, 1963, at the behest of influential members of the Executive Council and notably by Sir Stafford L. Sands, the Governor, Sir Robert de Stapeldon Stapledon, was induced to sign, in circumstances of remarkable secrecy, a certificate of exemption in favour of a company called Bahamas Amusements Limited in respect of gambling casinos on Grand Bahama Island. Sir Stafford Sands, who was attorney for the applicant and was under the new constitution in 1964 to be Minister of Tourism and Finance, has already been referred to in the previous chapter, and became in 1966 a director of the Royal Bank of Canada, the oldest and largest international bank doing business in the islands, a step which, if taken in Canada by a minister of the Crown, would be considered glaringly improper, but in the Bahamas appeared to be a matter of course, and perhaps a wise precaution on the part of financial institutions doing business there. The excuse offered on behalf of Sir Stafford and other members of the government, who pursued their private vocations resolutely and profitably while performing the function of ministers, was that they received no official emoluments, and that conflict of interest could not be said to exist. The transparent speciousness of this argument requires no further comment, but it is significant that the present ministry has introduced legislation for the payment of ministers in the usual way. Let it suffice that the grant of a certificate of exemption to Bahamas Amusements Limited for Grand Bahama, later extended to other parts of the Colony, led directly to the development of a situation which attracted the attention, first of the Wall Street Journal, and later of other sections of the international press, and produced so much

unfavourable comment in and outside the Bahamas that the United Bahamian Party government led by the Premier, Sir Roland Symonette, itself proposed to ask for the appointment of a Commission of Inquiry, and this proposal was implemented by its successors after the general election of 1967. The Commission of Inquiry was appointed by the Governor on March 9, 1967 under the presidency of Sir Ranulph Bacon, and included a Detective Superintendent of the Metropolitan Police in Great Britain and a Canadian chartered accountant, Mr. Vernon Turley of Montreal. The Commission, which was required to report by October 31, 1967, was at first given only three months in which to transact its business and produce its report, and was considerably hampered in its efforts by its inability under the provisions of the local Commissions of Inquiry Act to compel the production of documents, "an astonishing omission" as the Commissioners say. None the less, and quite apart from the interest and importance of its findings and conclusions as to the business of casinos in Freeport and in Nassau, the report provides convenient and authoritative information about the origin of the development of the great concession granted by the colonial government to Wallace Groves and his associates on Grand Bahama Island, in which the principal settlements are Freeport and Lucayan Beach, frequently referred to with singular lack of verbal artistry as Freeport/Lucaya.¹

Report of the Commission of Inquiry into the Operation of Casinos

No more concise or authoritative account of the recent development of Grand Bahama Island may be given than by quoting paragraphs 37 to 42 of this report. In reading these extracts it should be borne in mind that references to the "Port Authority" are to Grand Bahama Port Authority Limited, to "the Development Company" to Grand Bahama Development Company Limited and to "the Amusements Company" to Bahamas Amusements Limited, all of which were Bahamian corporations.

"37. Mr. Wallace Groves, a Wall Street financier, may be said to be the architect of the present prosperity of Freeport. He first visited the Bahamas in the early 1930's where he purchased a small island known as Little Whale Cay some 30 miles northwest of Nassau. In 1946 his Canadian born wife, Mrs. Georgette Groves, acquired all of the capital shares of an old established timber company called the Abaco Lumber Company Limited. That company originally had timber concessions in Abaco, but by the time of Mrs. Groves' purchase it had transferred its activities to Grand Bahama. In the late 1940's Mr. Groves began to consider the idea of a large scale development on Grand Bahama. His original scheme was for the creation of a completely free port on the

¹Bahama Islands: Report of the Commission of Inquiry into the operation of the Business of Casinos in Freeport and in Nassau, H.M. Stationery Office (856177) Dd. 391800 2000 11/67.

Island; all imports and exports handled through the port would be free of customs duty. He discussed this idea with Sir Stafford Sands, a practising Bahamian attorney and Member of the House of Assembly, who had already become a close friend of his. Sir Stafford was unable to support such a project since, in the absence of any income or profits tax in the Colony, the financial mainstay of the Government was the imposition of customs duty. The creation of a completely free port anywhere in the Bahamas would have proved to be a large drain on the Treasury. However, the idea persisted in Mr. Groves' mind, and in 1953 he suggested a formula to Sir Stafford Sands whereby all consumer goods brought into the Island would be liable to import duty but that all manufacturing and building materials necessary for the economic development of a specific part of the Island could be imported duty free. All articles manufactured in that area were also to be duty free on export. By these means Mr. Groves hoped to create a flourishing trading and industrial development on this hitherto totally undeveloped Island. The idea commended itself to Sir Stafford who canvassed the proposal with some of his colleagues in the House of Assembly and proceeded to draft what is known as the Hawksbill Creek Agreement.

38. This Agreement took the form of a contract between the Port Authority, a Bahamian company formed by Mr. Groves for the purpose, and the Governor in Council. The latter was authorised to enter into such an agreement by the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (Chapter 235) enacted on 20th June, 1955. This Statute merely recited that the Governor in Council was authorised to enter into an agreement with the Port Authority, the substance of which was set out in the Schedule to the Act, for the dredging of a deep water harbour and the establishment of an industrial area at and in the vicinity of Hawksbill Creek on Grand Bahama. Under the Agreement, which was entered into on 3rd August, 1955, the Government agreed to grant a conditional purchase lease to the Port Authority of 50,000 acres of Crown land surrounding Hawksbill Creek and a conditional purchase lease of the sea bed of Hawksbill Creek. In consideration of this grant the Port Authority covenanted to dredge a deep water harbour at the Creek and to construct a wharf there to accommodate cargo vessels. It also undertook to promote and encourage the development of an industrial area in the 50,000 acres of Crown land so leased and in a further 1,500 acres purchased or to be purchased by the Port Authority in the near vicinity. The whole of this area for development was and is termed the Port Area, but is now better known as Freeport. The Agreement also imposed upon the Port Authority the duty to provide, within the Port Area, living and office accommodation for certain Government officers and employees, schools, medical services and facilities. The Agreement allowed for the importation into Freeport of all materials and supplies, other than consumer goods, free of customs duty into the Port provided that they were necessary for work on the Port project itself, the construction or building and operation in the Port Area of civil engineering works, factories and

business premises, utility undertakings and other business ventures operated by or licensed by the Port Authority. In addition, no export duties were to be charged on any goods exported from the Port Area.

39. The above is only a very sketchy and incomplete outline of the provisions of this Agreement. The various privileges, powers and obligations of the Port Authority thereunder are too numerous and detailed to be set out here. In some respects the effect of the Agreement was to give almost feudal powers to the Port Authority, but it imposed heavy obligations on that company as well.

40. Initially, the principal investor in the Port Authority was Mrs. Groves' Abaco Lumber Company Limited. Later, other substantial interests invested in the project and the position is now that approximately 50 per cent of the shares are owned by that company, approximately 25 per cent by members of the Hayward family in the United Kingdom, approximately 25 per cent by an American group of investors, a relatively small number of shares by Mrs. Groves personally and less than 1 per cent by Mr. Groves. It can be seen, therefore, that Mrs. Groves, through her interests in the Abaco Lumber Company Limited still has the majority holding in the Port Authority of which, however, her husband is the President. Mr. Groves told us that he receives a reasonable salary for his work in that connection. He has apparently no financial interest in any other company in the Bahamas save for the nominal shareholdings requisite for him to be elected a Director of various subsidiaries of the Port Authority. There is now a large complex of these subsidiaries. Despite his personal lack of shareholdings in the Port Authority and its subsidiaries, Mr. Groves obviously plays a dominant part in the company complex, whilst his wife, who apparently holds the purse strings, does not. It may be that Mr. Groves' American citizenship, which renders him liable to U.S. income tax wherever he is, has led him so to arrange his affairs in the Bahamas that his British wife, who is not subject to income tax, is the legal owner of his small empire and of the income which it produces.

41. Despite the considerable concessions conferred on the Port Authority in 1955, the concept of a large trading and industrial area did not materialise as rapidly as had been anticipated. By 1960 there was only one undertaking of any size—Freeport Bunkering Company. Industrialists were reluctant to invest in projects in the area because of the lack of sufficient entertainment and recreational facilities for personnel who would have to be persuaded to come and live on the Island. Accordingly, in 1960 the Port Authority turned its attention to the residential and tourist development of Freeport. This necessitated an amendment to the 1960 Agreement which is set out in the Schedule to the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) Act (Chapter 236) which was enacted on 9th June, 1960. Under this amendment the total size of the Port Area was roughly trebled and the Port Authority was authorized to sell for residential purposes land which was originally allotted to it in

1955 for industrial development. The Port Authority further agreed to build in Freeport by 1st December, 1963, at least one first class hotel of 200 bedrooms.

42. In 1961 Mr. Louis Chesler appeared on the scene. He is a Canadian who had a number of substantial business interests in the U.S.A. and Canada. In particular, he was a major shareholder in the General Development Company of Florida which had just completed one of the largest and most successful land developments in the U.S.A. at that time. He was a highly experienced man in land development. Indeed, he was described by Sir Stafford Sands as the most outstanding real estate salesman he had ever come across. Mr. Gonsalves, President of the Amusements Company and former President of the Development Company, somewhat wryly categorised him as "a high promotional individual". It was in keeping with his somewhat flamboyant nature that he was a compulsive gambler. He was introduced to the possibilities of development on Grand Bahama by Sir Stafford Sands. He met Mr. Groves and between them they formed the Development Company in 1961 to which the Port Authority conveyed approximately 100,000 acres for the purposes of development and tourism. In exchange for this conveyance, the Port Authority received half of the capital stock of the Development Company. Thus, the principal shareholders in the new Company were:

- (a) The Port Authority with a 50 per cent shareholding representing about \$12,000,000;
- (b) Laredo Uranium Mines Ltd. a Canadian company, with a shareholding of $20\frac{3}{4}$ per cent, The Seven Arts Company Ltd., also a Canadian company, with a shareholding of $20\frac{3}{4}$ per cent, and Mr. Chesler, with a personal shareholding of $8\frac{1}{2}$ per cent—together representing an investment of about \$12,000,000.

Mr. Chesler was a major shareholder in both Laredo Mines and the Seven Arts Company and thus had a measure of control over 50 per cent of the stock of the Development Company, of which he was made President. With this injection of new capital and new blood into the Freeport project it was everybody's hope that the development of the area would proceed considerably faster than hitherto."

As a footnote to this account, it should be said that "Laredo" is properly spelled "Lorado" in the title of the company referred to, the error no doubt being due to the similarity of pronunciation of the two words. It should also be said that the filing statement of Seven Arts Productions Limited, filed with the Toronto Stock Exchange on August 29, 1961¹ asserts that its interest in Grand Bahama Development is to be held by a wholly-owned subsidiary, incorporated for the purpose in the Bahamas, and that the Lorado interest was to be held by another subsidiary of Lorado Uranium Mines called Lorado of Bahamas Limited.

¹Exhibit 2640.

L. A. Chesler and the Hotel Project

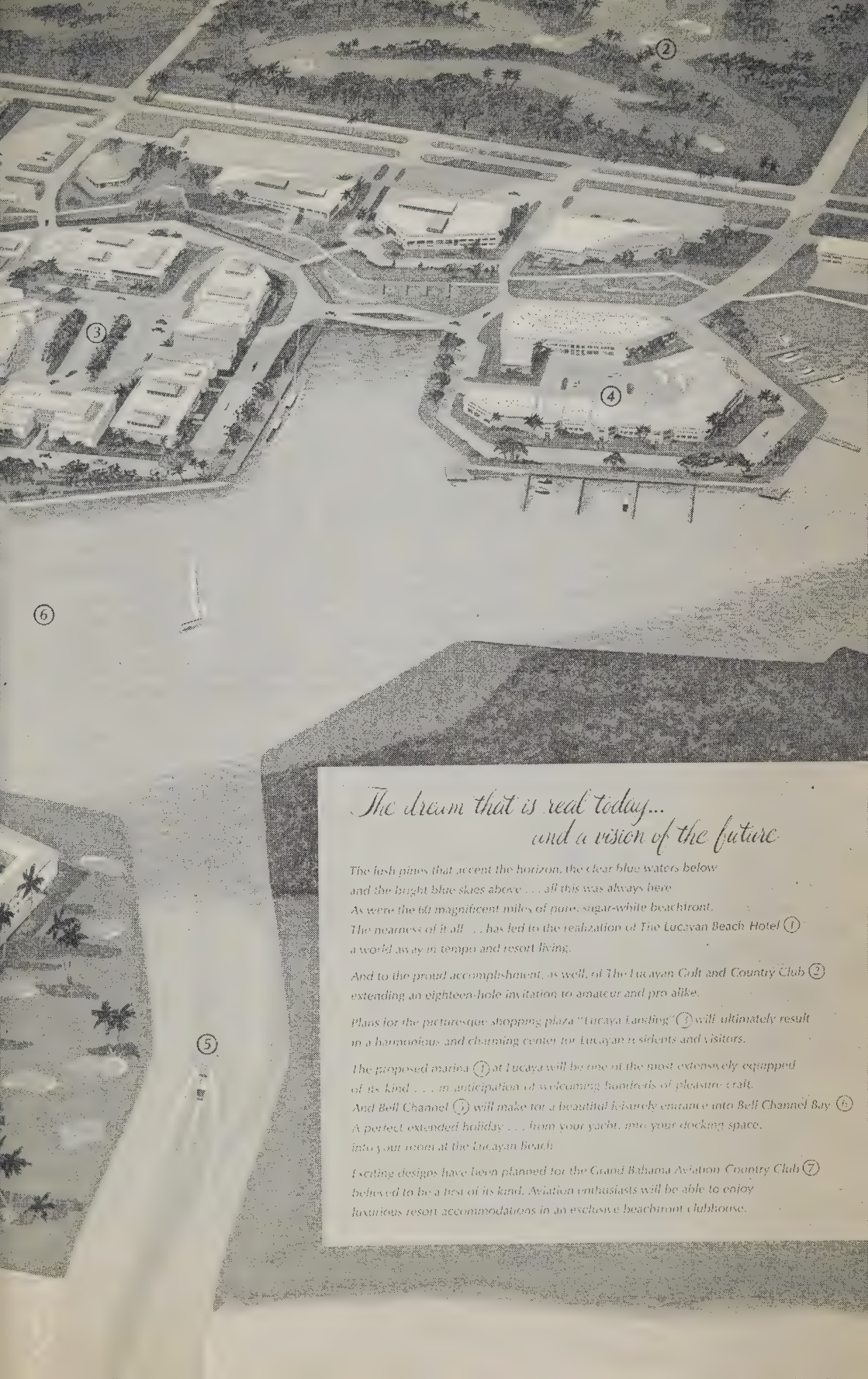
Louis Arthur Chesler voluntarily appeared before this Commission on October 6, 1966. This was several months earlier than his appearance before the Bahamian Commissioners, who animadverted severely upon the credibility of his testimony before them, and upon his responsibility for introducing members of the American underworld into the management of Bahamian casinos through his connections with Myer Lansky, commonly held to be an associate of the Mafia and described by Chesler, in his Bahamian testimony, as the "Dean of Gambling". His evidence here,¹ unconnected as it was with this delicate subject, appeared to be sufficiently candid and reliable. He was born in Belleville, Ontario on February 4, 1913, was educated at Peterborough High School and the University of Toronto, and spent many years with the Toronto stock-broking firm of Draper, Dobie & Co. With the considerable fortune made by him in Florida real estate, Lorado Uranium Mines and Seven Arts Productions, he moved to the Bahamas in 1961, and became president of Grand Bahama Development upon its incorporation, resigning in 1964 after fundamental disagreement with Wallace Groves.

One of the commitments made by the Port Authority to the Bahamian Government, in consideration of the almost manorial rights conferred upon it by the Hawksbill Creek Act, was for the construction of a "de luxe" resort hotel of no less than 200 rooms. This obligation was assumed by Grand Bahama Development Company and the hotel, construction of which according to Chesler commenced in August, 1962, was built as part of an elaborate scheme of development on the beach at Lucaya, on the south shore of Grand Bahama and on lands conveyed to Grand Bahama Development Company by the Port Authority. Behind the selected beach was a large swampy area, connected with the sea by an opening known as Bell Channel, and the plan called for dredging of the swamp to form an artificial lagoon to the north of the beach on which the hotel was built, and the erection in this lagoon of a "marina", with mooring slips and a shopping centre connected with additional residential accommodation called a "motel" or "boatel", these being words of slang coinage which must unfortunately be used from time to time because of their lamentable currency. To the northward and inland from the lagoon construction was begun on a golf course for the Lucayan Country Club. The grand design is illustrated by an artist's aerial view contained in a brochure called "Lucaya Today"² which is reproduced overleaf. The whole project was not completed as portrayed, as will be seen, but it is of interest because it shows with accuracy the situation of the hotel and the marina, and the general arrangement of the dredged lagoon described as Bell Channel Bay. The contract for

¹Evidence Volume 70.

²Exhibit 2639.





*The dream that is real today...
and a vision of the future*

The lush pines that accent the horizon, the clear blue waters below
and the bright blue skies above... all this was always here.

As were the 60 magnificent miles of pure, sugar-white beachfront.

The nearness of it all... has led to the realization of The Lucayan Beach Hotel ①
a world away in tempo and resort living.

And to the proud accomplishment, as well, of The Lucayan Golf and Country Club ②
extending an eighteen-hole invitation to amateur and pro alike.

Plans for the picturesque shopping plaza "Lucaya Landing" ③ will ultimately result
in a harmonious and charming center for Lucayan residents and visitors.

The proposed marina ④ at Lucaya will be one of the most extensively equipped
of its kind... in anticipation of welcoming hundreds of pleasure craft.

And Bell Channel ⑤ will make for a beautiful leisurely entrance into Bell Channel Bay ⑥.
A perfect extended holiday... from your yacht, into your docking space,
into your room at the Lucayan Beach.

Exciting designs have been planned for the Grand Bahama Aviation Country Club ⑦
believed to be a first of its kind. Aviation enthusiasts will be able to enjoy
luxurious resort accommodations in an exclusive beachfront clubhouse.

the construction of the hotel, which was to have 254 rooms and public areas of a size that would appear only to justify an eventual complement of 500 rooms, was awarded to the Taylor Construction Company of Florida, which shortly after beginning its work went into bankruptcy as a result of prosecutions against it undertaken by the Bureau of Internal Revenue of the United States. The hotel was to cost \$6,000,000 on a "cost-plus" basis and, according to Chesler, ultimately cost \$9,000,000 because of serious underestimates by the contractor, the foreman of which, Charles Martin, completed the building, almost entirely as required by the end of 1963, under the corporate name of Lucaya Construction Company Limited, originally a subsidiary of Grand Bahama Development Company. One of the factors which Chesler cited as having contributed to the greatly inflated cost of the Lucayan Beach Hotel, was compliance by the latter company with what he said was a request by the government to build a casino in the hotel complex. As to the extent that the initiative for this project was supplied by the government, recourse must again be had to the report of the Bahamian Commissioners.

"59. On 1st April, 1963, the Governor in Council granted to the Amusements Company a Certificate of Exemption to operate an unlimited number of casinos, each to be in or in conjunction with an hotel, on the Island of Grand Bahama for a period of ten years. The circumstances which led to the making of the application for this Certificate, and those surrounding its grant by the Governor in Council, require careful consideration.

60. During 1962 it became increasingly apparent that the Freeport area was not developing as rapidly as had been planned. Land sales were far below the level necessary to justify the enormous investment which the Development Company had already made in that area, and by the latter half of the year that Company was running into severe financial difficulties. In these circumstances Mr. Groves and Mr. Chesler began to consider what further steps were required to boost the land sales programme in, and the commercial development of, the Freeport area. Not unnaturally Mr. Groves sought the assistance and advice of his friend and attorney of many years standing, Sir Stafford Sands. The latter, who had been Chairman of the Development Board since 1950, had considerable experience in dealing with problems such as this. His public responsibilities in that capacity and his keen interest as a friend and attorney of Mr. Groves made him an obvious person to whom to turn.

61. These three men concluded, and we think rightly, that the relative failure of the Freeport development was due to the lack of sufficient high class hotel accommodation, and recreational and sporting facilities on the Island. Without such amenities, Grand Bahama, as one of the most flat and least attractive islands in the Bahamas, was unlikely to attract sufficient tourists, settlers and investors to sustain the vast development

of Freeport on which so much had already been invested. Something had to be done, and done quickly, to remedy the situation.

62. The panacea prescribed by Messrs. Groves and Chesler, with the active encouragement of Sir Stafford Sands, was the introduction of casino gambling to Grand Bahama. We do not know exactly when this decision was finally reached. On the evidence before us it looks as if it evolved gradually over a period of time in the latter half of 1962—a period during which the Development Board also had such a possibility under review. It is highly probable that all three men had been interested in such a project as early as 1961 before the urgent need arose to provide a stimulus to the development of Freeport. Nevertheless the need for such a stimulus by the end of 1962 provided both the occasion of, and a real justification for, the decision to seek a Certificate of Exemption for the Island of Grand Bahama.

63. The scheme devised was a sound one. It provided initially for the opening of one large casino as an integral part of the Lucayan Beach Hotel which was already under construction at Lucaya in Freeport. Not only would the proposed casino be a great attraction for tourism purposes, but its profits would be used to subsidize the building of new hotels and, indirectly, the improvement of sea and air connections with the Island. Such profits as would remain after these obligations had been met would be handed over to the Development Company, on whose financial support the casino operation would depend in its early days. If the scheme worked well, it was envisaged that further casinos would be opened on the Island on a similar basis at a later stage. The new venture was to be financed equally by Mr. Chesler and Mrs. Georgette Groves, the wife of Mr. Wallace Groves. Sir Stafford Sands, in his capacity as an attorney, was given the task of drawing up the scheme in detail and of presenting the application to the Governor.”

The Gambling Concession to Bahamas Amusements Limited

The Bahamian Government were not unmindful of the dangers of granting this valuable concession, at this time unencumbered by taxation, to persons and under circumstances over which it could not exercise decisive control. As in the case of the original agreement under the Hawksbill Creek Act, the shareholdings in Bahamas Amusements Limited, incorporated for the purpose of applying for the certificate of exemption on March 20, 1963, did not, any more than in the case of those of Grand Bahama Development Company, ostensibly provide for participation by Wallace Groves himself, a United States citizen and a former inmate of a United States federal penitentiary. Out of authorized share capital of 500 £1 Class A shares and 500 £1 Class B shares, 498 of the former were allotted to Chesler and 498 of the latter to Georgette Groves, the promoter's wife, both of whom were British subjects. The remaining four shares were issued singly to the nominees

of Chesler and two directors of Grand Bahama Development Company, all of whom were likewise British subjects. The terms of the agreement between the Governor, Chesler and Mrs. Groves, which appears to have been executed on the same day as the grant of the certificate of exemption to Bahamas Amusements Limited, April 1, 1963, were summarized by the Bahamian Commissioners in paragraphs 81 and 82 of their report. In addition, I also quote paragraph 83, not only because of its intrinsic interest, but because it reveals the extent to which the resources of the Port Authority and the Grand Bahama Development Company had been stretched by undertakings of which the building of the Lucayan Beach Hotel was by no means the least, but, in view of the development of the deep water harbour at Hawksbill Creek and the establishment of commercial enterprises in Freeport, was perhaps not the greatest.

"81. The full text of the agreement is set out in Appendix IV to this Report (Document 3). We set out here a summary of its more important provisions. The prior written approval of the Governor in Council was required before there could be any increase in the capital of the Company, any alteration in the Memorandum or Articles of Association, or any change in its directors. Mr. Chesler and Mrs. Groves each undertook to deposit all their share certificates in the Company with the Trust Corporation of the Bahamas Ltd. They also undertook jointly with the Government to sign a letter of instruction to the Corporation requiring it to hold those shares in its custody until receipt of a further letter jointly signed by them, or the survivor of them or their personal representatives, and the Government, requiring their delivery to the Government or to them or their respective personal representatives. In the event of either director wishing to sell his or her shares, they were bound first to offer them to the Government at par. Such shares could only be bequeathed to their respective spouses, children or other direct descendants. A transfer was not to be approved by the directors of the company until the transferee or transferees had undertaken to deposit the share certificates with the Trust Corporation under a similar agreement with the Government.

82. In the event of the Governor in Council having any reason to suspect that the control or management of the Company or of any casino operated by the Company was being exercised by persons other than Mr. Chesler or Mrs. Groves or their appointed directors, Mr. Chesler and Mrs. Groves could be required by the Governor in Council to submit the matter to arbitration in accordance with the provisions of the Arbitration Act of the Colony. If it were found on arbitration that the suspicions of the Governor in Council were correct, all of the A shares and all of the B shares were forthwith to be offered to the Government at par.

Notification to Applicants of the Success of the Application

83. The Governor authorised Sir Stafford Sands to inform his clients of the success of their application, but, as recited in the Colonial Secretary's letter of 29th March, there was otherwise to be no publicity of the

matter until the Certificate was formally granted. We have heard two contradictory versions about the manner in which this good news was first communicated to the applicants.

(a) Both Mr. Groves and Sir Stafford Sands gave evidence that on the morning of March 28th the latter telephoned the former (who was not strictly speaking his client in the matter) and told him the news. This account is supported by a photostat copy of a handwritten letter from Mr. Groves to Mr. Chesler dated that same day which was made available to the Commission. The letter (Document 76) read as follows:

'Dear Lou,

28th March, 1963.

Stafford called me this A.M. The *news* is of course grand and definite. Vote 5/3. I do not know full details but gather RTS voted No.

Stafford is *really* concerned over leaks, rumours, etc. and says that the matter can still be defeated. It will take two weeks more or less for certificate of exp. to be signed and in addition he has *promised* no publicity until after return from England. Stafford blames S. Kelly and us (He thinks you). Please, please, be careful.

Elis of Freeport News (and one other) says you laid at Caravel Bar 50 to 1 bet that there would be gambling in Freeport before end of year and Frank Stream told all over that Wednesday was D. Day—and that you did. We are being flooded with requests for information. Too bad.

Do hope you feel better.

I am now *most concerned* over *money* and think a meeting must be held on that soon.

My Best,

Sincerely,

WALLACE.'

The reference to RTS in that letter was to Sir Roland Symonette. Both Mr. Groves, who admitted writing the letter, and Sir Stafford Sands firmly denied that the information contained therein as to the voting in Executive Council was given to Mr. Groves by Sir Stafford. If it had come from that source, the latter would have been in breach of his oath of secrecy as a Member of the Council—an oath to which he and all his former colleagues in that body were so concerned to adhere when giving evidence before the Commission. Mr. Groves gave us the rather unsatisfactory explanation that he obtained the information about the voting from general gossip in the Bahamas—be it noted only one day after the matter had been discussed in Council. In view of the wording of the letter, we find it hard to believe that Mr. Groves was not referring in this particular to information which Sir Stafford had given to him on the telephone. In a matter in which secrecy had been of the utmost importance to those concerned and so well kept, it is unlikely, in our view, that within a day general gossip in the Bahamas would have disclosed to Mr. Groves in Freeport a confidential detail such as this.

(b) Mr. Chesler denied that he had ever received the above letter and gave us an account which was totally inconsistent with it having been written at all. He said that both he and Mr. Groves were told of the success of the application by Sir Stafford Sands in the latter's office in Bay Street, Nassau, immediately after the matter had been discussed in Executive Council on March 27th. On this broad issue of the manner in which the decision of the Governor in Council was first communicated to Messrs. Groves and Chesler, we prefer the evidence of Mr. Groves and Sir Stafford. We see no reason to doubt the authenticity of the letter. It was admitted in evidence before the Commission after Mr. Groves had identified it, but it was not made available to the Commission through the agency of any person giving evidence before it. Moreover, Mr. Groves would have had little to gain by falsely admitting to writing a letter which was in great measure embarrassing to both him and Sir Stafford Sands. There would have been no occasion for the letter if Mr. Chesler's account were true."

The transaction of this momentous piece of business did not, as Groves' letter indicates, do anything at once to ease the serious shortage of funds at the disposal of Grand Bahama Development. The sale of the Lucayan Beach Hotel was in consequence decided upon, and it was this decision which, as will be seen, brought C. P. Morgan eventually on to the scene. No doubt by this time Groves and Chesler were also aware that Grand Bahama Development was committed to pay very substantial fees to "consultants" such as Sir Stafford Sands and other members of the Executive Council, although it does not appear that they had thus far been forewarned of the amount of Sands' fee for obtaining the certificate of exemption, which amounted to \$515,000 for certain, and probably well over \$1,000,000 in the view of the Bahamian Commissioners, whose inability to get documents from the principal actors has left the matter in doubt.

Sale of Lucayan Beach Hotel to the Manus Brothers

At first it appeared that the highest bid obtainable for the Lucayan Beach Hotel would be no more than \$6,000,000 in United States funds. No doubt one of the difficulties in disposing of it was the necessity, as Chesler described it, of retaining control over the casino, the first on Grand Bahama, and now to be included in the hotel precincts and to be known subsequently as the "Monte Carlo". But the terms of the certificate of exemption were precise, and the likelihood of another certificate being issued to the purchasers of the hotel was remote and clearly not in the long-term interests of Bahamas Amusements Limited. There were, however, eager purchasers at hand, prepared to offer \$6,500,000 in the shape of Allen S. Manus and his brother Cecil. These two stock promoters, formerly of Toronto, have been referred to before in connection with the affairs of Commodore Business Machines, and Allen

Manus, in particular, as to his appearance in the complicated transaction of July 10, 1963, involving Morgan, Walton and Wagman, Associated Canadian Holdings Limited, Five Wheels Limited and Commodore Business Machines.¹ The result was that W. R. Salter, Q.C., representing Allen Manus, C. P. Morgan and Jack Tramiel became directors of Five Wheels, which, by selling 100,000 of its own shares in the first instance to Commodore Business Machines for \$750,000 provided by Aurora Leasing Corporation, and buying 100,000 shares of Commodore Business Machines for \$500,000 from Associated Canadian Holdings, was able to advance to its Bahamian subsidiary company, Five Wheels of Grand Bahama Limited, the sum of \$250,000 for the purpose of constructing the marina on Bell Channel Bay. The date of the first meeting between Allen Manus and C. P. Morgan, which took place in the Royal York Hotel and was attended by Manus, Morgan, Tramiel and Albert A. Shelman of Five Wheels, has not been precisely recalled, although its occurrence was testified to by both Morgan and Tramiel. From the chronology of other and contingent events known to the Commission it must have occurred not later than May of 1963, and it had portentous consequences for both Morgan and Atlantic Acceptance.

Allen Manus did not appear to testify before the Commission, although he was invited to do so. His intentions in this respect were long in doubt, since he had expressed his willingness to co-operate with the Commission to officers of the Securities and Exchange Commission when they examined him in New York on October 27, 1966. When the examination was renewed on November 29 he sought the protection of the Fifth Amendment to the Constitution of the United States, on the ground that answering any further questions might incriminate him, and it became clear from subsequent conversations with his Toronto solicitor that he had no intention of either making a voluntary appearance or of placing himself within reach of a subpoena. Consequently, relevant portions of his evidence given on oath to the Securities and Exchange Commission² were read into the record by Mr. Shepherd on February 23, 1967.³ From that given on the first occasion, in so far as his counsel, a Mr. Milton E. Mermelstein, let him testify at all without interruption, it appeared that he was born in Toronto on July 20, 1924, attended school here, although not completing his secondary education, and got into the stock brokerage business by "marking the boards" in the office of Bongard & Co. After a period of service in the Royal Canadian Air Force during the last war he worked successively for Ericson, Hevenor & Co. and Goodwin, Harris & Co., also members of the Toronto Stock Exchange, going in 1948 to New York to do similar work for brokerage firms in that city. In 1950 he returned to Toronto, with his "training

¹Chapter VIII, pp. 349-56.

²Exhibit 4068.

³Evidence Volume 100.

accomplished", and became a stock promoter. He was associated with his brother Cecil Manus in an American company called Manus Corporation dealing in investments, and eventually moved from Toronto to Nassau in the Bahamas in 1962, at the same time maintaining a house in Palm Beach, Florida for his estranged wife and their daughter.

According to both Chesler and Manus, the latter was interested in engaging in some enterprise which would justify his application for Bahamian residential status. A letter of intent, as the Commission was informed by James E. Maher, was signed as early as November 1962, and on May 30, 1963 an agreement was entered into between Grand Bahama Development Company on the one hand, and Adobe International Supply Limited and Freeport International Company Limited on the other, all incorporated in the Bahama Islands.⁴ The agreement recites that the Development Company is constructing a hotel and agrees to complete it, granting to Adobe International Supply and Freeport International an option to purchase for a payment of \$300,000, which amount is not refundable if the transaction is not completed. The balance of the purchase price was to be \$6,200,000, or \$6,500,000 in all. The optionees agreed, in the event of the purchase being completed, to a lease to Bahamas Amusements Limited of the casino area in course of construction (identified upon a plan which has not come into the Commission's possession) for ten years at a rental of \$600,000 per annum, and twelve shops in the hotel building at a gross rental of \$150,000 per annum. The transaction was to be completed four days after the vendor had notified the purchasers that the hotel had been finished in accordance with an architect's certificate to be submitted; the Development Company, of course, was obligated to complete the structure, together with its furnishings, by December 31, 1963, in accordance with its agreement with the Port Authority. The option agreement is signed for the Development Company by Louis Chesler, and for Adobe International Supply and Freeport International, each of which contributed \$150,000 for the option, by Allen S. Manus. Sir Stafford Sands was attorney for the vendor, and Peter D. Graham, soon to be Minister of Labour in the United Bahamian Party government, attorney for the purchasers. The benefit of the option agreement was later assigned to the Lucayan Beach Hotel Company Limited, which had been incorporated on July 26, by an agreement dated November 14, 1963,⁵ at which time the Development Company, also a party, agreed to spend an additional \$200,000 on the construction and furnishing of the hotel, and the purchase price was increased to \$6,700,000, all amounts expressed to be in United States funds. At this time the date of closing was fixed for December 28. In addition the Development Company undertook to

⁴Exhibit 2623.7.

⁵Exhibit 2623.8.

furnish to the Hotel Company a licence from the Port Authority enabling it to operate—a prerequisite for all enterprises in the domain created by the Hawksbill Creek Act.

Allen Manus Turns to C. P. Morgan

Chesler told the Commission that at this point he had known Manus for some twenty years, during sixteen or seventeen of which he had not spoken to him, because Manus had not made good on a commitment made to Chesler when the latter was with Draper, Dobie & Co. in Toronto. It is all the more remarkable, and is perhaps a measure of the financial embarrassment of the Grand Bahama Development Company at this time, that Chesler should have thus bound it to Manus's corporate creatures for a period of seven months, during which title to the Lucayan Beach Hotel would be encumbered by their option. Chesler said that reconciliation between himself and Manus was effected by Albert A. Shelman of Five Wheels, who had promoted the Royal York Hotel meeting and introduced Manus to Morgan. In any event, Manus made light of the problem of finding over \$6,000,000 in his conversations with Chesler, as he did later to Morgan who described him as "a superior salesman". Since Chesler was a salesman *par excellence* and knew his man of old, it is difficult to believe that Manus did not at this point give assurances that he was in a position to tap the apparently unlimited resources of Atlantic Acceptance Corporation. Manus, in his appearance before the Securities and Exchange Commission, in the course of giving a large amount of evasive and untruthful evidence, was concerned to minimize the extent and the closeness of his association with Morgan, although he acknowledged having dealings with companies which Morgan was "supposed to control". Perhaps the explanation is that both Chesler and Manus were successful gamblers and caution was foreign to them. In any event, it is now necessary to look briefly at the inter-relation and nature of companies controlled by the Manus brothers, about which Allen Manus, clearly not given to reticence, was discouraged from testifying by the solicitous Mermelstein.

For this evidence, and for all that offered in connection with the involvement of Atlantic Acceptance with the Lucayan Beach venture in its accounting aspects, except the detailed study of the part played by Dalite Corporation (Canada) Limited which was given by Mr. Wolfman, the Commission was indebted to another member of the firm of P. S. Ross & Partners, Mr. John M. Burn. His testimony occupied three days of the Commission's hearings,¹ and was accompanied by a chart and numerous schedules which are essential for the understanding of the nature and the extent of the Atlantic entanglement. The first one is entitled

¹Evidence Volumes 52-4.

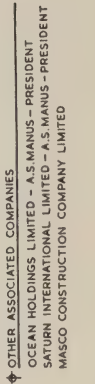
"The Manus Group of Companies" and is the chart reproduced opposite.² The two companies from which all ramifications extend, as far as the Manus brothers are concerned, are Molly Corporation, incorporated in the State of Delaware on January 15, 1962 to acquire the assets of an established concern which manufactured a patented expanding screw, and Freeport International Company Limited, incorporated in the Bahamas in March, 1961. All the shares of Molly Corporation were owned by St. Lawrence Industries Inc., another Delaware corporation controlled by the Manus brothers, which was to be dissolved as at September 30, 1963 and its assets, consisting of the shares of Molly Corporation, distributed to its shareholders, including all the directors of Molly Corporation, namely Peter D. Graham of Nassau, Erwin Lane, David S. Lawi, Cecil Manus and Milton E. Mermelstein, and of course Allen Manus himself. One of these shareholders was C. P. Morgan, whose first purchase of the shares of St. Lawrence Industries was made on August 19, 1963 amounting to 2,500 shares at a price of \$10 per share.³ Morgan said that Allen Manus was not one to let grass grow under his feet, and implied that this purchase was made as a result of over-persuasion by Manus; but it will become clear that by this time Manus must have discussed with Morgan in the greatest detail his plans for the financing of the purchase of the Lucayan Beach Hotel, and that Morgan was being let in on the ground floor. The chart also illustrates the interest of Molly Corporation in Five Wheels Limited, of which Morgan became chairman as a result of the transactions in July of 1963, when the attempt to secure investment in this company for Commodore Business Machines was frustrated by the latter's board of directors, and Morgan, Tramiel and Kapp, through Associated Canadian Holdings, were compelled to step in and retrieve the commitment. It will be seen, also, that Molly Corporation had two subsidiaries, one of which, Adobe Brick and Supply Company, was incorporated in 1963 to take over in April of that year a group of companies engaged in the marketing of building materials in the State of Florida, and a Bahamian company called Adobe International Supply Limited, incorporated on December 13, 1962, of which the two Manus and Erwin Lane were directors and which has already been referred to as an optionee, jointly with Freeport International, in the agreement with Grand Bahama Development to provide for the purchase of the Lucayan Beach Hotel.

Before dealing in some detail with the tangled history of the financing of the Lucayan Beach Hotel Company Limited, which succeeded to the interest acquired by Adobe International and Freeport International in the contemplated purchase of the hotel, two preliminary observations should be made. In the first place the task of the Commission's investigators was greatly hampered by its inability to compel the production of

²Exhibit 2799.

³Exhibit 1917.

CORPORATE STRUCTURE CHART AT JUNE 17, 1965



documents and company records situated in the Bahamas, always excepting the constating instruments of Bahamian companies on file with the Registrar General in Nassau, who was kind enough to furnish certified copies of them to me whenever requested, and without charge. It will be appreciated that these merely show the names of subscribers to the memoranda of association who are, generally speaking, solicitors acting for the real incorporators and their clerks. The Commission was therefore dependent upon what the Clarkson Company Limited, acting for the Montreal Trust Company as receiver and manager of Atlantic Acceptance Corporation, could make available from the documents under its control, and in particular to Mr. J. L. Biddell who made extracts from the minute books of certain companies at the request of counsel. For the rest, the Commission's investigators mainly depended upon accounting documents, prospectuses and correspondence found in the files of Ontario companies and firms who responded to subpoena, or volunteered information. The harvest in this respect was abundant, but there are areas of doubt which will be referred to from time to time. Although it was freely predicted that the Commission would never be able to explore, much less understand, the nature and extent of Atlantic's disastrous losses in the various ventures on Grand Bahama Island to which Morgan committed its funds, much has come to light. Secondly, it will be impossible to understand the evidence which must now be considered without reference at once to certain tables prepared by Mr. Burn, to be referred to hereafter as occasion requires. They cover the whole period from the earliest investment of Atlantic funds in 1963 to the time of Atlantic's default, and, in accordance with practice adopted hitherto in this report, will be referred to now for further reference as the account proceeds.

Documents Illustrating the Commitment of Atlantic Funds

The first schedule, entitled "The Atlantic Group and its Debtors—Loans and Investment Involvement in the Lucayan Venture (not including interest accruals on loans) from June 30, 1963 to June 17, 1965", is Table 45.¹ It shows the situation, month by month, of loans made to specific debtors, the names of which stand at the head of this schedule and which borrowed directly or indirectly from Atlantic Acceptance Corporation, or subsidiary or associated companies such as Commodore Sales Acceptance and Aurora Leasing Corporation. The schedule should be considered in conjunction with the notes appended to it. It will be noted that the amounts attributed to William L. Walton and Harry Wagman are alone not *in pari materia* with the other figures shown, being originally financed wholly by bank loans. Since the indebtedness was subsequently assumed by Masco Construction Company Limited, a

¹Exhibit 2641.

Morgan company, and paid off through money provided by Atlantic Acceptance, they are included for the purpose of making the record comprehensive. Also to be noted in passing is the reduction of the indebtedness of Dalite Corporation (Canada) Limited to Commodore Sales Acceptance, from a high point of \$7,349,548.88 in March of 1965 to \$3,568,073.69 in April, and by the assumption of \$3,780,000 by the Berlin bank, Hugo Oppenheim und Sohn, which again will be examined in detail. The largest user of Atlantic funds is, as the schedule indicates, Dalite Corporation, which in turn advanced funds borrowed from Commodore Sales Acceptance to its associated company Daylite of Grand Bahama Limited; the latter also borrowed a comparatively small amount from Aurora Leasing. Any attempt to show with precision accruals of interest on the outstanding loans was found by Mr. Burn to be impracticable, because of the difficulty in isolating specific loans from other moneys owed to Atlantic Acceptance; but he estimated the accrued interest, by July 17, 1965, to be somewhat in excess of \$500,000, which would bring the total debt to or near an aggregate amount of \$12,-000,000.

A substantial portion of the money supplied by Atlantic to these borrowers was invested in shares of the Lucayan Beach Hotel Company Limited, and the extent of this is illustrated on a second schedule, inserted as Table 46² and entitled "Lucayan Beach Hotel Company Limited—Capitalization of the Company at Original Issue Dates to June 17, 1965". In the first two columns the date of subscriptions and the names of the subscribers are shown, the first two being Adobe International Supply and Freeport International which received shares in respect of their advance of the option payment made to the Grand Bahama Development Company; the other columns represent successively the number of shares issued at the date of the subscription, the equivalent number after the stock had been split and subsequently re-organized as the appended note describes, the amounts paid into the company's treasury and that portion of them derived from the Atlantic group of companies in Canadian dollars, and from other and unknown sources in U.S. dollars, with explanatory comment in the right-hand column. The first page of the table shows this position in relation to equity, and the second page in relation to long-term debt. It will be seen that in United States funds the amount of Atlantic money which found its way into the treasury of the company for shares was \$5,320,000, lent to the different subscribers, and out of 10,000,000 shares issued a total of 3,256,675 were pledged to companies in the Atlantic group at the date of collapse. The impasse into which Morgan had led Atlantic by June 1965 in this area of its financial operations, through sheer improvidence and piecemeal lending, is well illustrated by the fact that, at that time, money derived from it had enabled its borrowers to acquire 79.9% of the equity

²Exhibit 2642.

funds in the Lucayan Beach Hotel Company, but the Atlantic group held as security only 32.6%, or 3,256,675 of the total of 10,000,000 issued shares. But two considerations operated to produce this result, given the premise that C. P. Morgan exerted absolute control for all practical purposes over the lending of Atlantic and its associated group of companies. Morgan was enchanted with the hotel and everything connected with it, from the time that he first visited Freeport at the invitation of Manus in September 1963; and, as usual, his interest in his own personal enrichment predominated over his sense of duty to the companies that he served, and the directors and shareholders of which looked to him for guidance.

The analysis may be carried further by pointing out that the only other security held by a company associated with Atlantic Acceptance was the personal guarantee of Allen Manus for the debt of Freeport International, in the amount of \$1,200,000 U.S. funds, payable to Aurora Leasing, shown on the second page of Table 46 as being secured to Freeport International by debentures of the Lucayan Beach Hotel Company. The manner in which the balance of Atlantic's huge investment of over \$11,000,000 was advanced by way of construction loans, first to Dalite Corporation (Canada) and through it to Daylite of Grand Bahama, will be dealt with in detail, but in the upshot, as security for advances of over \$11,000,000 through its subsidiary and associated companies, Atlantic held 32.6% of the issued shares of the Lucayan Beach Hotel Company and the personal guarantee of Allen Manus for \$1,290,000 in Canadian funds. For the effective value of the former security, reference to the unaudited balance sheet of Lucayan Beach Hotel and Development Limited (the name having been changed in early 1965) as at September 30, 1965³ shows that, after deducting a substantial appraisal surplus, the book value of the stock is represented by total shareholders' equity of \$5,958,445, giving the Atlantic group a book value for its security of \$1,942,308, which is something less than 20% of the aggregate of the loans obtained.

The Molly Corporation Underwriting

Manus's plan to finance the purchase of the Lucayan Beach Hotel by putting money into the Lucayan Beach Hotel Company was simple enough in concept. Under the original option agreement between Chesler's Grand Bahama Development Company and Manus's Adobe International Supply and Freeport International companies the total purchase price amounted to \$6,500,000 in U.S. funds, of which \$300,000 had been paid on obtaining the option. Manus appears to have been confident of raising \$5,000,000 by way of mortgage through Barclay's Bank in London, and the balance of \$1,500,000 was to be raised by a public

³Exhibit 2625.

offering of 100,000 shares of Molly Corporation at \$15.75 per share in Toronto, 75¢ of which was earmarked for the underwriters. The prospectus¹ is dated October 3, 1963, the underwriters were E. T. Lynch & Co., and L. J. West & Company Limited, now defunct, and these two firms were each responsible for half of the underwriting. The prospectus recites the conclusion of four agreements dated August 14, two with each of these companies in respect of two blocks of shares, each amounting to 50,000. One block of 50,000 was from the treasury, of which 25,000 were offered to each of the underwriters, and the other block of 50,000 was offered on the same terms as issued and outstanding shares by "a shareholder". All the issued and outstanding common shares of Molly Corporation, being 692,500 out of 1,000,000 shares authorized, were owned by St. Lawrence Industries, which, on winding up at September 30, distributed these to its shareholders on the basis of one share of Molly Corporation for each share held of St. Lawrence. A letter dated October 1, signed for St. Lawrence by Allen Manus and Erwin Lane, and addressed to Crown Trust Company in Toronto as transfer agent of Molly Corporation, contains a list of the shareholders of St. Lawrence showing 12,500 shares of this company, at the close of business on September 27, as being held by E. T. Lynch & Co. The records of Barrett, Goodfellow & Co. show that these shares belonged beneficially to C. P. Morgan, the monetary equivalent being \$125,000, and that Morgan was entitled to 12,500 shares of Molly Corporation.² The St. Lawrence list shows also that 405,500 of its shares were owned by Salkeld & Co., a nominee of the Bankers Trust Company in New York in respect of which instructions emanated from E. D. Sassoon Banking Company Limited of Nassau, as a telegram from that company indicates.³ A letter from Sassoon's to E. T. Lynch & Co. of October 3⁴ further establishes the fact that the shares held by Salkeld & Co. belonged to Manus's company, Freeport International, which thus controlled Molly Corporation. Molly Corporation wholly owned Adobe International which shared equally with Freeport International in the ownership of all the issued stock of the Lucayan Beach Hotel Company Limited, except the single shares of its directors who had been elected on July 30, 1963 in the persons of Allen S. Manus, Cecil Manus, C. P. Morgan, Erwin Lane and C. T. Craddock, the first manager of the hotel. It is one of the curiosities of Allen Manus's evidence given to the Securities and Exchange Commission that he denied that Morgan had ever been a director of the Hotel Company. As a shareholder of Molly Corporation, Morgan was entitled to the benefit of an offer by Adobe International dated October 31,⁵ which recites the fact that Adobe International owns 800,000

¹Exhibit 176.

²Exhibits 2805-6.

³Exhibit 2801.

⁴Exhibit 2600.1.

⁵Exhibit 2803.

shares of the Lucayan Beach Hotel Company Limited at a cost of \$1 per share, and on the instruction of Molly Corporation offers shares of the Hotel Company at cost to Molly shareholders, on the basis of one share for each share of Molly held. There is no projection of this offer in the Molly prospectus, although it is disclosed therein that "a wholly-owned subsidiary" held a one-half interest in the Lucayan Beach Hotel Company. From this abbreviated account the nature of the control exercised by Allen Manus, provided that the underwriting was successful, can be discerned, as well as the initial position of C. P. Morgan in an undertaking which had already stimulated his imagination and was to enthrall it to the end.

The records of the Crown Trust Company, transfer agent for the Lucayan Beach Hotel Company, as at December 31, 1963, show that on December 18 Barrett, Goodfellow & Co. were registered as owners of 12,500 shares⁶ which the firm's ledger account identifies as Morgan's.⁷ The warrant entitled the holder to purchase these shares from Adobe International, but for some unexplained reason Morgan got the shares from a private company of Manus's called Saturn International Limited to which 32,500 shares were transferred on December 5, 1963. The records of the transfer agent also show that on December 5 Associated Canadian Holdings obtained 100,000 shares, and on December 31, 1963, Harry Wagman was the registered owner of 4,000. There were, in all, at this date 1,700,000 shares of the Lucayan Beach Hotel Company outstanding, with Freeport International still holding 800,000 shares. The method by which Adobe International and Freeport International each obtained 800,000 shares requires an explanation which, in the state of the records available to the Commission, must remain largely speculative. When the Lucayan Beach Hotel Company acquired the option to purchase the hotel from Adobe International and Freeport International in August, it issued 53,567 £1 shares to Adobe International and 53,568 to Freeport International for \$300,000 U.S. funds in all. By special resolution, taken on September 15, the shares were split four for one, and these companies received 214,272 shares each. It should be said parenthetically that Table 46 shows this figure as 214,280 shares, the outstanding incorporators' shares being included for convenience and to avoid unnecessary elaboration. The position, therefore, after this transaction was that the Lucayan Beach Hotel Company had its option, and had issued shares for its acquisition, but had no money in its treasury. Accordingly it issued an additional 585,720 five shilling shares to each of Adobe International and Freeport International for \$600,000 U.S. The total payment of \$1,200,000 evidently found its way into the treasury of the Lucayan Beach Hotel Company, as Table 46 indicates. One might have thought that the subscription of Adobe International was

⁶Exhibit 2627.1.

⁷Exhibit 504.

derived from the sale of rights to the shares of the Hotel Company to the shareholders of Molly Corporation, as indicated in a letter from the assistant manager of the transfer department at Crown Trust Company in Toronto to E. D. Sassoon Banking Company Limited in Nassau, dated January 23, 1964.⁸ Attached to this was a cash statement, dated January 23, 1964, asserting that 656,518 rights had been exercised at \$1 by that date out of a total offered of 755,518, and that the cash on hand from this transaction, plus deposits made to the account of Adobe International in the Toronto-Dominion Bank, amounting in all to \$541,198, and a direct payment of funds to the company by the Manus brothers of \$125,000 in respect of 125,000 escrowed shares, had yielded \$666,198 in the aggregate. However, evidence found in the files of Perlmutter, Orenstein & Co., Toronto chartered accountants employed by Allen Manus, consisting of notes and photostatic copies of bank statements at the Sassoon bank, indicates that Adobe International got its \$600,000 by way of borrowing \$300,000 from Molly Corporation out of the proceeds of the underwriting, and receiving \$125,000 from Allen and Cecil Manus in accordance with the Crown Trust statement, an additional payment of \$85,000 from Saturn International, and the balance from an unknown source. The uncertainty attending this derivation of funds is an example of the confusion created by inability to cause documents to be produced in the Bahamas, and the evidence may well be complementary rather than contradictory. The position of Freeport International is more definite because it borrowed \$250,000 in Canadian funds from Aurora Leasing, \$225,000 in U.S. funds from the Bank of Nova Scotia and \$202,719, also in U.S. funds, from Sassoon's, a loan which was guaranteed by C. P. Morgan.

The Molly Corporation underwriting was not a success. Of the 50,000 treasury shares offered, Freeport International had to buy back 19,335 shares for \$305,000, advanced by Sassoon's against a deposit by Molly Corporation in this amount out of the underwriting profits, so that the fact that it was buying its own shares could be effectively concealed. As a result, although \$750,000 was remitted to Molly Corporation representing a sale of 50,000 shares at \$15, the net proceeds to the Manus group were only \$445,000 of which \$60,000 was provided by Masco Construction Company Limited and \$157,500 by Dallas Holdings Limited. The manner in which shares were subscribed for, largely by nominees or by subscribers who eventually did not pay for their shares, was minutely described by Mr. Burn and illustrated by documents,⁹ but it will suffice to summarize the result which is that nearly half of the net proceeds realized came indirectly from Atlantic Acceptance—and this must be considered a bare minimum considering the state of the records—or \$217,500 out of \$445,000. Of the remaining \$227,500 some was

⁸Exhibit 2623.9.

⁹Evidence Volume 52, pp. 7120-47; Exhibits 2811, 2637.1, 2813-5, 2624.2 and 2613.2.

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derived by purchases from the underwriters' commission account in the case of L. J. West & Co., and some possibly from Manus and Morgan and his associates. Fifty thousand shares offered by Freeport International, and ostensibly subscribed for by a company called Nucleus Developments, were returned unsold. In the result at least \$300,000 of the net proceeds went into the treasury of the Lucayan Beach Hotel Company to take down shares for the account of Adobe International. The extent of the participation of Dallas Holdings must be qualified by saying that, in consideration of that company buying 10,000 shares of Molly Corporation and exercising rights to acquire 10,000 shares of the Lucayan Beach Hotel Company from Adobe International, Allen Manus advanced to Dallas a third of the total amount required, or \$55,833, giving a promissory note for the total amount of \$167,500, and undertaking to indemnify Dallas against any loss on the transaction.¹⁰ The note, which did not provide for the payment of interest, was to be cancelled after the completion of the sale. It was expressed to be due on December 28 and was dated October 21, 1963, the date on which the underwriting was considered to be complete. Manus's contribution of \$55,833 is reflected in the column illustrating the investment and loans of Dallas Holdings on Table 45.

Financing of the Lucayan Beach Hotel Company

In view of the difficulty of separating fact from illusion created by defective records, and Manus's habitual sleight-of-hand in financial matters, a conspectus of the financing of the Lucayan Beach Hotel with reference to the information given on Table 46 should be attempted. Three months before the incorporation of the Hotel Company, or in May 1963, \$150,000 had been provided by each of Adobe International and Freeport International. The Adobe funds came from a short-term loan in that amount supplied by Molly Corporation's bankers, the Berks County Trust Company, at a time when this concern was heavily involved in financing the Manus brothers' recent take-over of Molly from its former owners. It is not known to the Commission where they found \$150,000 for Freeport, but it may be more than coincidence that the first loans made to Allen Manus by the Trio, on the security of shares of St. Lawrence Industries and Molly Corporation, were made in May of 1963. Then, from the Molly Corporation underwriting proceeds of \$445,000 in Canadian funds, Berks County Trust was repaid on behalf of Adobe International \$75,000 in U.S. funds, and the Lucayan Beach Hotel Company \$300,000 in U.S. funds, the balance being used in the main to pay underwriting expenses. The sale of rights to purchase shares of the Hotel Company by Adobe International to shareholders of Molly Corporation is the next chronological step, the ostensible result of which, as has been seen, was to raise \$666,198. The largest Molly shareholder was Freeport

¹⁰Exhibit 2819.

International, and this company provided \$335,000 in U.S. funds to acquire the rights to which it was entitled by borrowing that amount from Barclay's Bank in Nassau. The contribution of a further \$85,000 by Saturn International has already been noted, and the source from which Saturn International obtained the money is not known. There are two further contributions to the Adobe total of \$666,198, the first being an ostensible payment of \$125,000 by Allen and Cecil Manus directly to Barclay's Bank on behalf of Adobe and to the credit of the Hotel Company, and the balance of \$121,198, the source of which cannot be specifically identified. In the case of the Manus loan of \$125,000, neither the source nor the existence of the funds are certain. Among the documents obtained from Perlmutter, Orenstein & Co. was a trial balance for the Hotel Company at January 30, 1964,¹ included in which is a figure in the amount of \$125,000 described as "pre-opening and operating expense". One of the firm's working papers was a receipt from Adobe International in the amount of \$125,000, described as "A. and C. Manus", which is also reflected in the Crown Trust Company's statement in relation to the sale of rights to Molly Corporation shares by Adobe International, with the handwritten notation: "add a direct payment of funds to Adobe re Cecil Manus and Allen Manus (125,000 escrow shares)". The evidence, although not conclusive, is strongly persuasive of the fact that 125,000 of the shares of the Lucayan Beach Hotel Company belonging to the Manus brothers was charged as a pre-opening expense to the hotel, and further diminishes the amount of money which they had at risk.

The offering of rights to shares of the Hotel Company by Adobe International appears, in short, to have secured very little money outside that provided by bank loans to the Manus companies and untraceable funds available to the Manus brothers. Its proceeds were used to pay the balance of Adobe's subscription for the Hotel Company's shares in the amount of \$300,000, and to advance to it a further \$11,000, to deposit \$150,000 with Sassoon's as collateral to a loan to Freeport International, to repay Molly Corporation \$75,000 and Berks County Trust Company \$75,000, so that the short-term loan from the latter of \$150,000 was fully paid, and to keep the balance of \$55,198 on deposit with Sassoon's in Nassau. The Lucayan Beach Hotel Company now had \$611,000 from Adobe International, \$600,000 of which was the required subscription for shares issued to it and financed by the sale of rights. Freeport International raised \$934,000 to pay its \$600,000 subscription to the Hotel Company, and to loan to it a further \$334,000. It borrowed \$202,719 from Sassoon's, the loan being guaranteed by C. P. Morgan, \$250,000 in Canadian funds (or \$231,281 U.S.) from Aurora Leasing Corporation and \$225,000 from the Bank of Nova Scotia, and received an additional \$125,000 the source of which is unknown. Adobe's deposit of \$150,000

¹Exhibit 2624.3.

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with Sassoon's was evidently used to provide the balance. The Hotel Company received \$600,000 by way of Freeport's subscription for shares and \$334,000 in addition by way of loans, so that the total additional amount loaned by Freeport and Adobe combined was \$345,000. Thus it was in a position to provide for \$125,000 in pre-opening expenses, genuine or not, to invest \$150,000 in the Lucayan Village Company Limited and pay incidental expenses such as the purchase of a boat for the use of its president, Allen Manus.

The Lucayan Beach Hotel Company apparently received—certainty on the subject being impossible—a total of \$1,545,000 in U.S. funds of which the banks provided in excess of \$1,000,000, Aurora Leasing \$250,000 in Canadian funds and Dallas Holdings and Masco Construction Company \$217,500, also in Canadian funds. Molly Corporation now disappears from the history of the undertaking. Its manufacturing operations were sold to the United States Shoe Machinery Company of Boston in December 1964, its name changed to Maklaw Corporation and the company wound up in July 1965. Allen Manus failed in his efforts to raise the required \$5,000,000 by way of mortgage in England for reasons that can only be guessed at. The news was a blow to C. P. Morgan who had already committed Atlantic money in the amount of almost \$1,000,000 to additional loans to one of Atlantic's principal debtors, Dalite Corporation (Canada) Limited, for the construction of badly-needed prefabricated housing for the employees of the hotel. This was to consist of 110 so-called "efficiency units" and was already in course of erection on land some distance from the hotel property, due to be conveyed to the Lucayan Beach Hotel Company on the closing of its purchase of the hotel from the Grand Bahama Development Company, but still owned by the latter. Although the affairs of Dalite Corporation and its associated company, Daylite of Grand Bahama Limited, require detailed examination later on, chronology at least requires that Morgan's reaction should be recorded in his own words. The evidence to be quoted serves to introduce the next stage of this account, illustrating the progressive involvement of Atlantic Acceptance in the Grand Bahama ventures, and it will be remembered that it was given some two months before the evidence of Mr. Burn. Mr. Shepherd's first question summarizes what had gone before.²

"Q. Could I stop you a moment and make sure I understand this. Mr. Manus spoke to you sometime during the Summer of 1963 and suggested that an opportunity existed for Dalite of Canada to supply employee housing in the Bahamas which would be built by Dalite and then be purchased by the Lucayan Beach Hotel, and you said that he or companies controlled by him had a right to purchase the Lucayan Beach Hotel for \$6,800,000 approximately, and he had paid \$300,000 in cash and that he was going to finance the balance by getting a mortgage for

²Evidence Volume 26, pp. 3488-94.

\$5,000,000 from Barclay's Bank in England and put up the difference in cash and that Lucayan Beach Hotel was going to be put in funds to pay the difference between the purchase price and the mortgage on closing by selling shares of Lucayan Beach to the public and that a right had been conferred upon existing holders of the shares of Molly Corporation to subscribe for shares of Lucayan Beach Hotel at \$1.00 per share and that out of this source as well, I take it, there would be available sufficient money to pay Dalite Corporation for the employee housing and that Dalite Corporation then proceeded to purchase lands from Grand Bahamas Development Company for approximately \$450,000 and Dalite Corporation expended a substantial sum in the manufacture of prefabricated parts for these buildings and also expended money in bringing the services on to the land, the obligation to pay Lucayan Beach Hotel—correction, to pay Dalite—for the land and buildings on completion, laying (sic) with Lucayan Beach Hotel; Lucayan Beach Hotel had no money or significant amount of money at that time but that Mr. Manus has assured you that by the date of closing Lucayan Beach Hotel would have finished public financing and would be in a position to pay Dalite in cash?

A. That is correct.

Q. Go on from there, please.

A. We are now up to the 10th of December.

Q. 1963?

A. Yes. The Hotel is getting very rapidly ready for its opening. The staff is arriving and being trained and they are getting all set to open on New Year's Eve.

About a week before Christmas Mr. Manus has gone over—in the meantime, Mr. Manus has gone over to England in connection with the mortgage money and is over there talking to the Barclay people. As a matter of fact, he even called me from overseas saying that everything was proceeding according to plan, how were we getting along about the housing. I said that, as far as I was concerned, everything was going ahead post-haste.

He came back to Toronto in quite a fluster. He tells me that the mortgage money in Barclay's has blown up. So I am now in a position of having advanced a million dollars for employee housing of a hotel that no longer has a hotel because they no longer have a mortgage. So I said, 'I don't know what we are going to do. What is your suggestion?' He said, 'I am going to fly back immediately to the Island and talk to the Development Company', which was then operated by Mr. Chesler as its chief operating officer, Mr. Louis Chesler.

So he went on down to the Island and he called me in a couple of days and said that he had made a deal with the Grand Bahamas Development Company that they would take back a mortgage of \$5,000,000 on the security of having a first mortgage on the hotel and that the rent for the casino and the shops would be pledged to the Grand Bahamas Development Company until the mortgage was paid.

I was not aware at this particular time that the mortgage was only for two years and it was at 8 per cent. It was just in mortgage form. So he said, 'Now, I have some problems in connection with that mortgage. Can I come up and see you?' I said, 'You have got some problems.' I have at that time 110 units of problems sitting there. 'Yes, you better come up.'

So he came up and the story was that the Grand Bahamas Development Company had spent almost nine and a half million dollars on the hotel which they were very loath to sell for six point eight million dollars to Mr. Manus, although they did not want to be in the hotel business and the gambling business too because they had found that the people in Las Vegas never got paid for any rooms, particularly if the gamblers lost at the tables.

As a matter of fact, a good proportion of the Las Vegas situation is that you get the rooms for nothing. So he said he had made a deal with Mr. Chesler that the purchase price was upped by a million and a quarter dollars to be paid immediately. This is now the 28th or 29th of December and they were trying to get the hotel opened in three more days.

I said, 'What is going to be the security for this money?' He said that Freeport International would put up 500,000 shares of Lucayan Beach Hotel as security, and he personally would guarantee the loan as he felt it was only going to be temporary until he got his financing going on the Lucayan Beach Hotel.

Q. Was it 250,000 shares?

A. It could have been. It eventually works out to a million and a quarter—five for one of the old shares.

Q. Yes.

A. I advanced that money to him that he required plus another two hundred and fifty thousand dollars through Aurora. I believe the total loan was \$1,500,000, maybe \$1,540,000, and it was secured by the shares of the hotel company, the guarantee of Freeport International, which financial statements showed a net worth of about \$3,000,000 at that particular time, and the guarantee of Allan Manus personally.

Q. I take it that his shares were not pledged as additional security other than the 250,000 shares of Freeport International?

A. There was specific pledging of 250,000 shares of Lucayan Beach and the guarantees of Freeport International and Manus.

Now, that enabled him to get enough money to close the deal with Chesler, according to what he said. The closing was about the 10th of January.

Then I get another hurry-up call from him to come down to Nassau. So I went down to Nassau to E. D. Sassoon Bank . . .

. . . continuing to meet with Mr. Manus and Mr. L'Arbelstier, who was the Managing Director of the Bank, the balance of the purchase price was apparently short some \$300,000, and Mr. L'Arbelstier wanted to get a commitment from me that if they called upon me I would invest \$250,000 in equity shares of the company after a 90-day period had elapsed, if it was deemed necessary by them.

Q. That is by the Sassoon Bank?

A. Yes. I gave this letter on a personal basis to the Bank and this enabled Mr. Manus to close the deal for the purchase of the hotel."

The financial statement of Freeport International relied upon by Morgan, showing "a net worth of about \$3,000,000", must be that for October 1, 1963, prepared without audit by Perlmutter, Orenstein & Co.³ While this statement shows share capital in the amount of \$3,687,126 and shareholders' deposits of \$954,007, the value of these is derived almost entirely from what is described as a "quoted investment" in 345,000 shares of Molly Corporation, entered as \$4,534,190.85. The value assigned is based on a share price of \$15, at which Allen Manus was then attempting to market Molly shares in Toronto with little success. The Commission's accountants determined that the Manuses' cash investment in Molly Corporation probably did not exceed \$500,000; within a matter of months this investment was written up on a set of unaudited statements to over four and a half million dollars. That a trained accountant and head of a substantial lending institution should rely on these, and the guarantee of the company for which they were provided, to lend it over \$1,500,000 on the tangible security of only a small part of the equity of the Lucayan Beach Hotel Company which held no more than an option on a hotel, without any form of mortgage security, is a measure of Morgan's infatuation and must remain a source of wonder.

It should be noted here that Morgan's exceptional memory may have played him false when he suggests that the sequence of events moved straight from collapse of the negotiations with Barclay's Bank to the eventual arrangement with Chesler, since there is a letter to D. S. Anderson, general manager of the Royal Bank of Canada from W. R. Salter, Q.C. dated November 21, 1963⁴ which shows that a contemporary effort was made to raise the necessary funds from that institution, on the same basis as had been contemplated before the terms of the arrangement with the Grand Bahama Development Company had been changed. It reads as follows:

"Mr. Donald S. Anderson,
General Manager,
The Royal Bank of Canada,
10 King Street East,
Toronto.

re: The Lucayan Beach Hotel Company Limited

Dear Don,—

Further to the information given you when Mr. Powell Morgan, Mr. Allen Manus and I saw you on Tuesday, we forward the following:

1. Pro forma balance sheet dated November 20th as prepared by Messrs. Perlmutter, Orenstein, Giddens, Newman & Kofman.

³Exhibit 2610.1.

⁴Exhibit 2613.2.

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2. Estimated profit and loss statement prepared by Messrs. Horwath & Horwath dated September 20th, 1963, for the 250 room Lucayan Beach Hotel. You will observe that there is an estimate of \$2,035,000 of profit for the hotel apart from rentals of the casino and stores which will amount to \$750,000 per annum.
3. Estimated profit and loss statement prepared by Horwath & Horwath for the operation of the 150 room motel to be owned by Lucayan Beach Village Company Limited which will be a wholly-owned subsidiary of The Lucayan Beach Hotel Company Limited. This property will include an auditorium with a seating capacity of 800 people, but no revenue from the auditorium has been included in the projection of income.

In effect, The Lucayan Beach Hotel Company Limited will be in a position to offer the following as security for the proposed loan:

1. A first mortgage on the hotel itself with approximately 20 acres of ocean front land on which a sum in excess of \$8,500,000 has been spent.
2. The assignment of the leases on the casino and on the stores in the hotel carrying an annual rental of \$750,000 payable in monthly instalments commencing January 1st, 1964. Payment of the rentals under the leases will be guaranteed by the Grand Bahama Development Company Limited.
3. The deposit as collateral to the mortgage of all of the shares of the Lucayan Beach Village Company Limited, the wholly-owned subsidiary of The Lucayan Beach Hotel Company Limited, or if desired, a first mortgage on the Lucayan Beach Village properties.

In our view the security offered is unsurpassed.

With kindest regards.

Your very truly,

SALTER, REILLY, JAMIESON & APPLE

'W. Ralph Salter'

WRS/rl

Encls."

In a handwritten note attached to the letter and dated November 19, it appears that the amount of mortgage being suggested to the Royal Bank is \$5,000,000 for five years, bearing interest at 8%.⁵ Chesler told the Commission that, as the year 1963 wore on, it became apparent to him that Manus was in difficulty about the mortgage in the course of frequent discussions they had together on the subject, and that he had personally checked on Manus's assertions that satisfactory commitments had been made to him in New York.

⁵Exhibit 2613.3.

Five Wheels of Grand Bahama Limited

Before returning to further consideration of the delayed closing of the sale of the Lucayan Beach Hotel and its appurtenances, a backward look must be taken at the development of the Bell Channel Bay area during the year 1963. The Royal York Hotel meeting of Morgan, Shelman, Allen Manus and Tramiel bore fruit in two directions. Shelman of Five Wheels had plans for a car rental operation on Grand Bahama where he ultimately established an automobile agency for cars manufactured by General Motors Corporation. How he became interested in the Lucayan project, or for what reasons, is not clear and perhaps irrelevant, but since the operation of all businesses in the area of Grand Bahama reserved to the Port Authority was conditional upon obtaining a licence from it, it may not be unreasonable to suggest that Chesler, Shelman and Manus agreed upon a commitment of the resources of Five Wheels to the construction of the marina in Bell Channel Bay. Two documents described as letters of intent, dated August 7 and September 7, 1963¹, show that the company's Bahamian subsidiary, Five Wheels of Grand Bahama Limited, bought part of "Hong Kong Island" from the Grand Bahama Development Company for £1, and gave an undertaking to pay \$250,000 towards the cost of dredging the marshes for the marina, a sum which, as has been seen heretofore, was obtained from the purchaser's parent company in the Commodore Business Machines-Associated Canadian Holdings transactions financed by Aurora Leasing in July. The dredging was to be done by the Freeport Construction Company at a cost estimated to be somewhat more than \$340,000 U.S. funds, and the Grand Bahama Development Company was to pay all the excess over \$250,000. In addition Five Wheels of Grand Bahama contracted with a Florida Corporation called Latham Construction Company for the building of bulkheads, docks and slips for the marina, and borrowed \$100,000 U.S. funds from Grand Bahama Development Company to make a down payment for this work. The total cost, including the dredging to be performed by Freeport Construction Company, was expected to be \$837,500,² but the balance required by the company to complete this programme was not obtained because both benefit and burden were taken over by Daylite of Grand Bahama, according to the terms of an agreement, dated April 9, 1964, between it and the two Five Wheels companies.³ By this agreement Daylite of Grand Bahama bought the marina project, and lands and water rights connected with it, for \$400,000, plus any sums paid by the Grand Bahama Development Company to the contractors with respect to the work; settlement was to be effected by Daylite assuming the \$100,000 debt of Five Wheels of Grand Bahama to the Development Company and a balance of \$300,000 to be payable

¹Exhibit 2597.1.

²Exhibit 2623.5.

³Exhibit 2623.6.

in equal instalments in August and December of 1964 and March of 1965. The purchaser also took over the contract with Latham Construction Company, but conceded to Five Wheels of Grand Bahama the right to 3% of the gross receipts of the marina for 30 years and the use of six docking slips for that period, a most valuable concession which was to cause trouble for the receiver and manager of Atlantic Acceptance later on. This balance of \$300,000 was in fact not paid until the time of the Atlantic collapse, principally because Five Wheels of Grand Bahama could not make title to the lands in question, a difficulty which seemed to bedevil all operations in the Port Authority area, and was alleged to be deliberately created.

The Problem of Housing Hotel Employees: Daylite of Grand Bahama Company Limited

It was not long after the signing on May 30, 1963 of the option agreement which Manus had negotiated with Chesler for the purchase of the hotel that he discussed with Morgan the problem of housing employees of the hotel; for provision for them had apparently been omitted from the plans of the Grand Bahama Development Company, and there was no place to house them in the prevailing wilderness of Lucaya except in the hotel itself. Morgan was in a most receptive mood to listen to a discussion of housing requirements, because large sums of Atlantic money had been lent to Dalite Corporation to enable it to finance contracts with the Department of Northern Affairs of Canada to build prefabricated components of houses to be used in the Arctic, and to fabricate and erect houses for employees of the International Nickel Company at Thompson, Manitoba. Morgan lost little time in seizing an opportunity to establish the virtues of prefabricated housing in an environment where there was no frost to complicate the problem of preparing foundations, and labour costs were lower than in the Canadian north. As usual Morgan's interest was not confined to concern for the repayment of Atlantic loans, since he had, as will be seen, a substantial personal interest in Dalite Corporation, demanded from its president, Eugene Last, when Atlantic had taken over the financing of the company from the chartered banks. Last was accordingly despatched to the Bahamas to discuss the problem with Manus and Chesler, and to negotiate an agreement for the purchase of lands from the Grand Bahama Development Company upon which the housing could be erected.

Daylite of Grand Bahama Company Limited was incorporated in the Bahamas on August 26, 1963¹ to purchase the required land, and to erect the prefabricated housing units already in the course of manufacture in Dalite Corporation's Toronto plant. At its organizational meeting

¹Exhibit 4957.

on August 30, 1963² the first directors elected were Eugene Last, Allen Manus and C. P. Morgan, Last being elected president and treasurer with Manus and Morgan vice-presidents. Morgan and Manus were to resign on December 3 and to be replaced by Peter D. Graham and Nathan Saunders, who had been introduced to the affairs of Dalite Corporation some time before by Morgan, and who was to play a somewhat ineffectual role as one of several personal representatives of Morgan on Grand Bahama Island with ill-defined responsibilities. According to Last, the ownership of the new company was held equally by Manus and Morgan, and later on all the issued shares, other than single shares held by the directors, were equally divided between Dalite Corporation and Associated Canadian Holdings in the amount of 55,000 shares each, so that Manus's position, if it ever existed, was eliminated. Construction was evidently begun in September 1963 when the books of account of Daylite of Grand Bahama were opened;³ none subsequent to November 1963 have ever been found and, in the opinion of officers of the Montreal Trust Company, did not exist. Negotiations for the purchase of the land upon which the housing was erected were not completed until after construction had begun, and were embodied in an agreement between the Grand Bahama Development Company and Daylite of Grand Bahama.⁴ It provided for the purchase of land by Daylite of Grand Bahama and its undertaking to construct twelve single unit dwelling houses and sixty apartments and multiple dwellings by December 31, 1964, and thirteen additional single units by December 31, 1965; thereafter these are referred to as 110 efficiency units. While the housing units were being prefabricated in Toronto, at a cost defrayed by loans from Commodore Sales Acceptance, and shipped to Grand Bahama for construction by Daylite of Grand Bahama, there was no agreement between the latter and the Lucayan Beach Hotel Company, or anybody else during 1963, to pay for what was being built; and by the end of the year Commodore Sales Acceptance had advanced approximately \$816,000 for housing which it was hoped would be occupied by employees of the hotel. The financial statement and report of Daylite of Grand Bahama as at March 31, 1964, audited by Walton, Wagman & Co.,⁵ show the efficiency units, including the cost of the land, as being worth \$1,000,000 in U.S. funds. As Morgan said, "If the Lucayan Beach Hotel Company had been unable to complete the purchase of the hotel, Commodore Sales Acceptance would have been in the position of having advanced over \$800,000 to build accommodation for the staff of a hotel owned by the Grand Bahama Development Company."

²Exhibit 2590.

³Exhibits 2821-2.

⁴Exhibit 2823.

⁵Exhibit 1078.1.

The Motel and Convention Hall Contract

But once on the scene in Grand Bahama, Morgan and Last were not content with the contract for the efficiency units alone. Regardless of the uncertainty of the hotel company's position Daylite of Grand Bahama undertook to build a 150-unit motel and a convention hall for Lucayan Village Company Limited, a subsidiary of the Lucayan Beach Hotel Company, on a portion of the Hong Kong lands lying west of the marina property on Bell Channel Bay, acquired, as seen, for £1 from the Development Company in exchange for its undertaking to do so. Lucayan Village was to reconvey the lands in question if construction were not commenced within twelve months, and Daylite of Grand Bahama was to be paid for the cost of construction, plus 10% for completing the whole structure within two months after possession of the site was given to it. The purchase price was to be paid in three monthly instalments of \$150,000 in October, November and December 1963, and the balance extended over seven years in monthly payments with interest at the rate of 10% per annum. The agreement,¹ dated September 20, 1963, was executed for Lucayan Village by Allen Manus and for Daylite of Grand Bahama by C. P. Morgan, and was subsequently amended by one dated December 5, 1963² to establish the purchase price, not at cost plus 10% but at \$1,350,000, payable \$150,000 down and the balance in instalments based on progress certificates. A further amendment was made on April 22, 1964, extending the date of completion to December 5 of that year, and deleting the requirement for the immediate payment of this sum. It may be noted that, at the time this agreement was entered into, Lucayan Village Company had no assets and was a subsidiary of a company which had no hotel, nor the funds to enable it to complete the purchase. The Lucayan Beach Hotel Company had increased its commitment from the \$6,200,000 necessary to acquire the hotel by an additional \$1,350,000 for the construction of the motel, including a down payment of \$150,000 which was not in fact made.

The problem of paying for the motel and convention hall led to a most involved transaction which can best be introduced by referring to an agreement between the Lucayan Beach Hotel Company and Associated Canadian Holdings, dated December 5, 1963.³ It provided that Associated Canadian Holdings would subscribe for 100,000 treasury shares of the Hotel Company for a price of \$1,200,000 in Canadian funds, in consideration for which the latter agreed to deposit the money in a bank designated as British Mortgage & Trust Company, "with instructions to the said bank that the said sum shall be earmarked solely for the purpose of making payments to Daylite of Grand Bahamas Company Limited under architect's progress certificates issued pursuant to a

¹Exhibit 2610.5.

²Exhibit 2610.6.

³Exhibit 2622 (w).

contract bearing even date herewith made between the Lucayan Village Company Limited as Owner of the First Part and Daylite of Grand Bahamas Company Limited as Contractor of the Second Part. Lucayan agrees that no payment shall be made out of the said account except to Daylite of Grand Bahamas Company Limited or with the consent of Associated". Then C. P. Morgan, in one of his characteristic handwritten letters addressed to W. P. Gregory on December 12, wrote as follows:⁴

"Mr. W. P. Gregory, Q.C.
Managing Director,
British Mortgage & Trust Co.

As discussed with you verbally on behalf of Associated Canadian Holdings Limited I would like to apply for a short term loan of \$1,200,000 Canadian. Suggested term to Mar 31, 1964 at 7%.

An offering of Lucayan Beach Hotel Company Limited of Freeport Grand Bahama (who rent the casino to the E. P. Taylor-Chesler-Grand Bahama Development Corp. at an annual rent of 750,000.00) is coming to market in January at 12.75 per share.

Associated have arranged with Lucayan Beach Hotel Company to give you a term deposit of \$1,200,000 at 4% to be held by you, in addition to the 100,000 shares of stock, as guarantee of repayment of your loan. This certificate of deposit will be hypothecated to B.M. & T.

Could we have an early answer.

C. P. Morgan"

There seems to be no excuse for the reference to E. P. Taylor, the well-known Canadian financier, now a resident of the Bahama Islands, as an associate of Chesler's in the Grand Bahama Development Company, and the immediate effect of this falsehood was its repetition in the minutes of British Mortgage & Trust Company dated December 17, 1963⁵ in the following terms:

"The Managing Director advised that Mr. Powell Morgan has made inquiries of our interest in two short loans. . . .

\$1,200,000. is required by Lucayan Holding Limited. This Company controls property in the Bahamas which is leased to Canadian Industrialists (one of which is E. P. Taylor) at a rental of \$750,000 per annum. The funds would be used to purchase a deposit receipt at 4% maturing March 31, 1964. Associated Canadian Holdings, a Company related to Lucayan will borrow on the security of our deposit receipt plus shares of Lucayan Holdings. There will, therefore, be no actual cash change hands but we will pay 4% on \$1,200,000. and receive 7% on the same amount.

The Committee approved both loans and left the details for the Managing Director to complete."

⁴Exhibit 2826.

⁵Exhibit 109.

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The agreement whereby Associated Canadian Holdings agreed to subscribe for the stock of the Lucayan Beach Hotel Company specifies, in the direction to British Mortgage & Trust attached to it as Schedule A, that the money held in escrow with the trust company be available to Daylite of Grand Bahama, but Morgan's letter, and the British Mortgage minutes authorizing the loan, make it clear that the money being advanced to the Hotel Company was in fact to be held by British Mortgage as security for a loan by it to Associated Canadian Holdings.

Grand Bahama Development Company was led to believe that this large sum of \$1,200,000 would remain on deposit to pay all claims so that the motel might be paid for when built, and refers to it explicitly in a letter dated December 21, 1963, to the Lucayan Beach Hotel Company which should be quoted, as it also sets out the basis upon which the Hotel Company was to be relieved of its need to find \$6,200,000 to complete the purchase of the hotel. This letter was signed for the Development Company by Louis Chesler and endorsed as "agreed to" by Allen Manus for both the Hotel Company, the Lucayan Village Company and in his personal capacity. A space for the signature of C. Powell Morgan, in the copy of the letter in evidence and acquired from the files of Salter, Reilly, Jamieson & Apple, is left blank. The relevant extracts are as follows:⁶

"We refer to the various agreements with respect to The Lucayan Beach Hotel (the Hotel) between your company and the undersigned pursuant to which you are obligated to pay us on December 28, 1963 the sum of \$6,200,000 (U.S.) against which payment essentially we are obligated to transfer title to the Hotel to you. You have advised us that you will be unable to close since you will not have cash available.

Subject to the drawing of appropriate documentation and the approval of legality by Bahamian counsel, it is your and our intention to modify the agreements between us along the following lines, so you will not default under your contract:

1. The Lucayan Beach Hotel Company, Ltd. (the Hotel Company) will on December 28, 1963 pay to The Grand Bahama Development Company Limited (the Development Company) \$1,200,000 (U.S.) The balance of the purchase price due will be increased to \$5,800,000 (U.S.)

2. The Hotel Company will agree to pay to the Development Company on January 28, 1964 the amount of all extras which were required to be paid pursuant to the existing contracts, such sum to be agreed upon between Mr. James E. Maher and Mr. Allen S. Manus and if they are unable to agree by January 21, 1964 as to such amount, an amount for such extras to be fixed by Stafford L. Sands, Esq. on or prior to January 27, 1964.

3. On December 28, 1963 there are to be delivered to an escrow

⁶Exhibit 2613.4.

agent, satisfactory to the Hotel Company and the Development Company, the following:

. . . . (e) All of the issued and outstanding shares (the Motel Shares) of Lucayan Beach Village Company Limited, a Bahamian corporation (the Motel Company) presently constructing a 150-room motel and an 800-seat convention hall on approximately a 6½ acre area, formerly known as Hong Kong West in Lucaya, Freeport, Grand Bahama (the Motel) together with an irrevocable direction to the person with whom there is presently escrowed \$1,200,000 (Canadian) to expend such sum for the completion, furnishing and equipment of such Motel and convention hall.”

Again there is a letter dated April 16, 1964 from Associated Canadian Holdings a copy of which was found in C. P. Morgan’s files, prepared for the signature of Jack Tramiel as president, addressed to the Grand Bahama Development Company at Coral Gables in Florida, in the following terms:⁷

“Gentlemen:

This is to advise you that the deposit receipt with the British Mortgage and Trust Company in the name of Lucayan Beach Hotel Company Limited (photocopy attached) is irrevocably committed for the construction of a 150 room motel and other services on the 7½ acre site near the marina opposite the Lucayan Beach Hotel in Lucaya, Grand Bahama.

It will be released by us upon engineers certificates, in whole or in part to Daylite Grand Bahama Limited, the contractor, and under no circumstances will it be paid over to the hotel company for general corporate purposes.

ASSOCIATED CANADIAN HOLDINGS LIMITED

Jack Tramiel
President”

British Mortgage & Trust Finances the Subscription of Associated Canadian Holdings

A loan of \$1,200,000 was in fact made to Associated Canadian Holdings by British Mortgage & Trust Company, and the subscription of the former for shares of the Lucayan Beach Hotel Company was paid by a cheque drawn in its favour, signed for Associated Canadian Holdings by Tramiel and Wagman on January 12, 1964 for this amount.¹ The ledger card at British Mortgage & Trust with respect to the Hotel Company’s account No. 10001 is marked with the telephone numbers of Morgan and Wagman and the notation: “All entries are to be filed in safe. All entries to be referred to G. Wilson”.² G. R. C. Wilson was

⁷Exhibit 2828.

¹Exhibit 2829.

²Exhibit 2830.

the trust company's manager at its premises at 2200 Yonge Street in Toronto where the deposit was made on January 15. The ledger card shows that a withdrawal was made the same day with an additional notation to "leave open". The deposit was made by Associated Canadian Holdings from the loan arranged with British Mortgage & Trust, and the withdrawal effected by a cheque dated December 20, 1963, drawn in its favour by the Lucayan Beach Hotel Company and signed by A. S. Manus and Peter D. Graham, in the amount of \$1,200,000 in Canadian funds.³ British Mortgage & Trust issued a deposit receipt, No. 4216, to the Hotel Company for the same amount dated January 16, 1964.⁴ This deposit receipt never left the trust company, being held as security as indicated by the fact that the depositor never signed the form acknowledging receipt of the money for which the receipt was issued. The deposit receipt was assigned by the Lucayan Beach Hotel Company, in a document also executed by Manus and Graham and dated December 23, 1963, to British Mortgage & Trust "as collateral only to a loan made by British Mortgage & Trust Company to Associated Canadian Holdings Limited in the amount of \$1,200,000 (Canadian funds) due March 31, 1964".⁵ Finally there was a note to British Mortgage & Trust, signed for Associated Canadian Holdings by Tramiel and Wagman, for \$1,200,000 due March 31, 1964, and bearing interest at 7%;⁶ but the loan was not paid on the due date and a second deposit receipt was issued, numbered 6928, in favour of the Lucayan Beach Hotel Company in the amount of \$1,210,126.10,⁷ which also remained in the possession of the trust company. The additional amount evidenced by the second receipt represents accrued interest at 4%.

There is nothing in the minutes of meetings of directors of the Lucayan Beach Hotel Company authorizing Manus and Graham to deal thus with the deposit receipt. Indeed, on the occasion of the public offering to which Morgan referred the company issued a prospectus dated May 29, 1964,⁸ signed by Allen and Cecil Manus. The promoter was shown as Freeport International Company Limited for which Allen Manus also signed. Note 1 to the consolidated balance sheet refers to a deposit of \$1,112,916 U.S. and continues: "The wholly-owned subsidiary has entered into an agreement for the construction of a motel and convention hall to cost approximately (Can. \$1,350,000) \$1,250,000. This deposit has been escrowed for this purpose". Only a week before, G. R. C. Wilson, from his Yonge Street branch, had written to his managing director in Stratford enclosing a copy of a letter which has not

³Exhibit 2831.

⁴Exhibit 2832.

⁵Exhibit 2834.

⁶Exhibit 2835.

⁷Exhibit 2836.

⁸Exhibit 181.

been found "from the attorney for the Grand Bahama Development Company Limited", evidently asking for the transfer of the proceeds of deposit receipt No. 4216 for \$1,200,000, held in the name of the Lucayan Beach Hotel Company Limited, to the Royal Bank of Canada. I say "evidently" because the files of British Mortgage & Trust Company show that two memoranda, with the same date and asking for the same instructions as to the propriety of this, were prepared for Wilson's signature. One of them, which he did not sign but which he was apparently unwilling to destroy, refers to the request for transfer to the Royal Bank of Canada, but the other refers only to the copy of the letter enclosed and concludes, "I would appreciate your advices as to whether I may comply with the requests in the letter, provided that I have the written consent of Associated Canadian Holdings Limited in accordance with Schedule A of the agreement referred to". This memorandum was endorsed in W. P. Gregory's handwriting, "Get in touch with Powell Morgan and be guided by him—and John Gordon. Remember that we have a loan to Powell's associates for \$1,200,000. W.P.G." Adjacent to these memoranda in the trust company's files is a letter dated March 26 from Wilson to C. Powell Morgan, marked as a copy and unsigned, but in appearance at least an original document.⁹

"We enclose a photostat of a letter received from the Attorney for the Grand Bahama Development Company Limited concerning the special deposit receipt No. 4216 for \$1,200,000. in the name of The Lucayan Beach Hotel Company Limited.

As you know, this deposit receipt is lodged as collateral security against the loan for \$1,200,000. in the name of Associated Canadian Holdings Limited, which is due March 31st, 1964.

It would appear that the request of the Attorney is not in accordance with Schedule "A" of the agreement between Lucayan Beach Hotel Company Limited and Associated Canadian Holdings Limited.

We would appreciate your advice as to the course of action we should take with regard to the enclosed correspondence so that we may advise the Attorney for the Grand Bahama Development Company Limited."

It will be noted that here again there is no mention of the specific nature of the request, so that there appears to have been an attempt made to purge the file of both of the letters sent on behalf of the Grand Bahama Development Company and any reference to its contents which was frustrated by Wilson, either inadvertently or by design, in the preservation of his first and unsigned memorandum to Gregory. But if there is any doubt as to the deliberation with which the assignment of the deposit receipt as security for a loan of \$1,200,000 to Associated Canadian Holdings was concealed by British Mortgage & Trust, as guided by C. P. Morgan, it is dispelled by its equivocal and misleading answer to

⁹Exhibit 2837.

a request by Price, Waterhouse & Co., auditors of the financial statement contained in the prospectus of the Lucayan Beach Hotel Company, when this firm inquired about the nature of the deposit in a letter to the trust company dated February 10, 1964.¹⁰ This letter, which emanates from the Nassau office of Price, Waterhouse & Co., asks for the completion of a certificate containing details of interest rate, interest at January 31, 1964 and the period of the deposit. Attached to it in the British Mortgage & Trust file is found a duplicate of the auditor's form, filled in to the extent of revealing that the deposit is \$1,200,000, bears interest at 4% and that accrued interest at January 31, is \$2,104.10. All the succeeding paragraphs in which information is required are marked "nil" except paragraph 7, requiring "particulars of any amount for which the above customer is contingently liable to the bank", and paragraph 8 which asks for "additional information". These are left blank, and paragraph 3, marked "nil", asks for particulars of any securities or other collateral held in respect of loans, notes payable and overdrafts. If any one of paragraphs 3, 7 and 8 had been properly completed it would have disclosed that the deposit receipt was not free of lien. The atmosphere of deliberation thickens on discovery of a carbon copy of a letter dated February 22 to Price, Waterhouse & Co. from Wilson, apologizing for the delay in returning this certificate. On January 16, and again on April 3, 1964, British Mortgage & Trust advised the Lucayan Beach Hotel Company Limited in identical terms that it was holding the deposit receipt as collateral security and "in accordance with Schedule A of the agreement between the Lucayan Beach Hotel Company and Associated Canadian Holdings".¹¹ Schedule A was the letter of deposit and instruction given by the parties to British Mortgage & Trust and concluding "no payments out of the said account shall be made except to Daylite of Grand Bahama Company Limited except with the written consent of Associated Canadian Holdings Limited."

Final Terms of Sale of Lucayan Beach Hotel: Opening and Management Problems

As already seen, provision had been made in the Grand Bahama Development Company's letter of December 21, 1963, subscribed to by the Lucayan Beach Hotel Company,¹ for raising the purchase price of the hotel from \$6,500,000 to \$7,000,000, both amounts expressed in U.S. funds. The hotel was not in fact sold for that price. The principal agreement to be considered was found in a bound volume prepared by Salter, Reilly, Jamieson & Apple² in which are a number of such documents, this being the second under a tab marked "(b)" and conveniently refer-

¹⁰Exhibit 2838.

¹¹Exhibits 2840-1.

¹Exhibit 2613.4.

²Exhibit 2621.

red to in evidence as Exhibit 2621(b). It is dated January 18, 1964 and provided for the sale of the hotel for \$7,693,462 U.S. funds of which \$5,000,000 was to be secured by a mortgage from the Hotel Company to the Development Company as vendor, bearing interest at 8% per annum and due in two years' time. The mortgage itself³ provides additional security by way of a covenant of the mortgagor that when the Development Company conveyed those lands which had been set aside for the erection of the motel to Lucayan Village Company the Hotel Company would mortgage them back, presumably by instructing its subsidiary to do so. It is apparent, therefore, that on January 18 Lucayan Village Company still did not have a conveyance of the lands on which Daylite of Grand Bahama had been building the motel with the money supplied by Atlantic Acceptance. Here was further proof, if proof were needed, that no one was really looking after Atlantic's interest, and Peter D. Graham, who sat on the boards of both the Lucayan Beach Hotel Company and Daylite of Grand Bahama was evidently prepared to accept any conflict which arose between Morgan and Manus as a customary hazard of his occupation as an attorney. There is a further agreement of the same date in connection with the motel⁴ between the Hotel Company and the Development Company, providing for the completion of the motel in accordance with new plans which are referred to as having been the subject of agreement, although the parties to such an agreement are not specifically identified, within six months of the date of conveyance of the land upon which it was being built. In the meantime the shares of Lucayan Village Company should be lodged with the Grand Bahama Development Company in condition for transfer as security, and in the event of default the Hotel Company would surrender its licence to operate a hotel to the Port Authority. The construction of the motel within the required time was critical, and upon it, therefore, rested the ability of the Lucayan Beach Hotel Company to operate its principal asset. Finally the arrangement to lease to Bahamas Amusements Limited the gambling casino and the twelve stores in the hotel for an annual rental of \$750,000 is embodied in an agreement between the same parties, also dated January 18,⁵ the rentals to be applied against the principal amount owing on the mortgage. This at last was the way in which the transaction was carried out and, after deduction of the \$300,000 paid for the option in the previous year, cash was required to close in the amount of \$2,393,462.

The Lucayan Beach Hotel Company now needed a further \$1,-200,000 over and above what had been received from Adobe International and Freeport International. This was obtained from Aurora

³Exhibit 2621 (e).

⁴Exhibit 2621 (f).

⁵Exhibit 2621 (k).

Leasing Corporation, as the loan register of Aurora Leasing⁶ indicates, and as Morgan described in the excerpt of his evidence already quoted. On January 2, 1964 Aurora bought a bank draft from the Canadian Imperial Bank of Commerce for \$250,000 and delivered a certified cheque to the Royal Bank of Canada in Toronto for \$1,290,000, for a total of \$1,540,000 in Canadian funds, recording this amount as a loan to Freeport International. Chesler's recollection is that Morgan brought down a cheque for the whole amount himself, and that he, Chesler, did his best to dissuade Morgan from making this investment. No doubt it was this kind of intervention on Chesler's part which induced Allen Manus to tell the Securities and Exchange Commission officers that Chesler was the "principal saboteur" in the island of Grand Bahama, but it is possible to conclude that Chesler was anxious for the reputation of the Lucayan venture not to be compromised by Manus's blandishments, and, as events will show, Morgan had every reason to regret his impulsiveness on this occasion. Moreover Chesler was well aware that Manus was getting a bargain at little risk to himself, if we are to accept the evidence provided by a letter from the Grand Bahama Development Company to Eugene Last at Daylite of Grand Bahama,⁷ setting out the cost of the hotel and the marina in the following terms:

"Land and improvements to land	\$ 143,488.00
Construction and pre-operating costs (including furniture, fixtures and equipment)	8,647,368.19
Estimated value of the Marina area of 20 acres and water rights	374,759.00"

Without access to the books of the Grand Bahama Development Company it is not possible to assess the validity of these figures, but they indicate that the Development Company was losing approximately \$1,100,000 in U.S. funds on the sale. Doubtless all was to be repaired by the profits from gambling for which Bahamas Amusements Limited was accountable to the Development Company, and Chesler's knowledge of the difficulties encountered in Las Vegas was, as Morgan suggested, sufficient to deter him from trying to operate a gambling concession in conjunction with a hotel. In fact the \$5,000,000 mortgage which the Development Company received together with the cash balance was to prove a valuable source of credit from the Royal Bank of Canada.

Aurora Leasing received no interest on its loan to Freeport International, although the rate was originally expressed as being 1½ % per month, subsequently reduced to 14% per annum. After the collapse of Atlantic on July 31, 1965 unpaid interest on the loan amounted to

⁶Exhibit 929.

⁷Exhibit 2844.

\$339,645 on a simple interest basis. Aurora's only security was 250,000 shares of the Lucayan Beach Hotel Company, which were pledged, and the personal guarantee of the loan by Manus annexed to Freeport International's note.⁸

Chesler recalled that the amount of money paid to the Grand Bahama Development Company by the Lucayan Beach Hotel Company on closing the hotel transaction in January was roughly \$2,800,000. He said that he flew from Freeport with Mr. and Mrs. Morgan, presumably to Nassau, to meet Manus. Morgan's evidence was to the effect that when he arrived in Nassau he found that Manus was still short some \$300,000 of the required balance to close, and that he raised this money, in part at least, by taking over a loan from the E. D. Sassoon Banking Company to Freeport International and acquiring from the latter at one dollar per share 250,000 shares of the Lucayan Beach Hotel Company pledged with the bank as security. Morgan's commitment to do this was given on the spot to enable closing to proceed, but he was given ninety days to complete the purchase of the shares which were lodged with the Sassoon bank, and against which by July 1965 he had paid some \$25,000 and accumulated interest. He was proud of the part he had played in this transaction because these shares, as a result of a reorganization of the capital structure of the Hotel Company and further splits, had become 1,250,000 when he turned them over to the Montreal Trust Company after the collapse; this, he said, put the receiver and manager of Atlantic in a strong position to acquire the interest of the Manus brothers and take over virtually complete ownership of the company. He had less reason to be proud of the way in which the Manus brothers dealt with him in recompense for this providential infusion of Atlantic money into their staggering hotel enterprise. Freeport International Company, to which Aurora Leasing had advanced \$1,540,000, in turn lent \$1,290,000 of this amount, or \$1,200,000 in U.S. funds, to the Lucayan Beach Hotel Company, taking back a debenture securing that amount with interest at 8%, the debenture being signed by Allen S. Manus as president. The minutes of meetings of the board of directors of the Hotel Company for January 8, 1964⁹ show that the issuing of this debenture was authorized by a meeting said to have been attended by Allen Manus, Cecil Manus and Alice L. Albury, the assistant secretary. The debenture was payable on demand and was not assigned by Freeport International to Aurora Leasing, as might have been expected, but to Cecil Manus on February 24, without any apparent consideration.¹⁰ Thus Freeport International obtained a senior security and ranked ahead of Aurora Leasing in respect to priority of claims. Morgan said that he did not hear about this signal example of bad faith and double-dealing until he saw the first

⁸Exhibit 2842.

⁹Exhibit 2567.

¹⁰Exhibit 2621 (p) and (q).

financial statement of the Lucayan Beach Hotel Company, but Chesler testified that Morgan's first realization of the position was after a dispute with Manus in the hotel, in the course of which Manus blurted out the secret, and said that he could wipe out the shareholders' equity. Morgan confessed that he was absolutely horrified, as indeed he must have been if he had not realized until that moment the kind of people he was dealing with in the Manus brothers, who had undertaken, according to him, to have Freeport International lend the money to the Hotel Company without security. If Morgan had protected Atlantic Acceptance by securing the services of independent solicitors, this transaction, which was to cost Atlantic noteholders dear when the Montreal Trust Company made its final settlement with the Manus brothers, could not conceivably have happened.

Manus had effectively secured his position in the affairs of the hotel where he proceeded to live in luxury during the early and disastrous period of its operations. The first manager, Charles T. Craddock, who had the support of Chesler, also a resident of the hotel, was an experienced American practitioner in the field. During his brief stay he had to wrestle with the problem of housing his employees on the ground floor of the hotel. But the opening ceremonies occurred on New Year's Eve of 1963 with great *éclat*, and Craddock's arrangements for these were highly praised by Chesler. Thereafter Allen Manus came to regard Craddock as an agent of Chesler's and was to let him go within three months, after which management was undertaken by the Dinkler Management Corporation of New York, according to an agreement dated March 17, 1964.¹¹ From a financial statement for the period January 1 to April 30, 1964, made without audit apparently by Perlmutter, Orenstein & Co., it appears that the new hotel lost \$157,372 in U.S. funds. Offsetting this operating loss was the casino and store rental in the amount of \$250,000, and after deduction of interest on loans and insurance premiums the final loss before depreciation of assets valued at just under \$8,000,000 is \$79,437. Another financial statement for the eight-month period from February 1 to September 30, 1964 shows an operating loss of \$529,573; after application of revenue from casino and store rentals and deduction of financial, directors' and other costs, the net result before depreciation is a loss of \$461,282. This statement does not include any loss occurring in the month of January. In the meantime Daylite of Grand Bahama had more than fulfilled the requirements of its agreement with the Grand Bahama Development Company in the construction of the efficiency units, which were ready to house the employees of the hotel in March. As might be expected, the Lucayan Beach Hotel Company was unable to pay for them, having by this time no money, and no expectation of getting any except from the contem-

¹¹Exhibit 2622 (y).

plated public offering of ordinary shares. Two separate leases dated March 27, 1964¹² provide for the rental of the units for an aggregate of \$990,000, payable over sixty monthly instalments, which amounted to \$198,000 per year at the rate of \$16,500 per month, subject to an adjustment in favour of the tenant for maintenance. All the money to build these efficiency units had been supplied by Commodore Sales Acceptance through Dalite Corporation, and the manner in which the Hotel Company paid the rent without paying any money and its effect upon the position of Commodore Sales Acceptance, which of course was detrimental, will be dealt with when the affairs of Masco Construction Company come to be considered.

It has been seen how Daylite of Grand Bahama had extended its interests and added to its responsibilities by purchasing the undertaking of Five Wheels of Grand Bahama to construct the marina and docks on Hong Kong Island at about this time, so that it was now committed to build the 150-room motel, the convention hall (which was never in fact built) and the marina and docks, all situated on the north side of Bell Channel Bay and conveniently contiguous. Daylite of Grand Bahama was, however, to confer an additional benefit on the Lucayan Beach Hotel Company by coming to its rescue with the Grand Bahama Development Company over the amount of payment for extras in the construction of the hotel which was, in the original purchase agreement, set to be decided by Sir Stafford Sands in case the parties failed to agree. In the event, the Development Company agreed to take \$250,000 in U.S. funds, paid for by a promissory note for that amount made by Daylite of Grand Bahama. This transaction becomes unusual when it appears that Daylite of Grand Bahama assumed this obligation without any consideration, and indeed made a gift of the money to the Hotel Company, the general ledger of which shows a credit of \$250,000 to its "capital and contributed surplus account", the explanation reading "settlement of G. B. Dev. Co. a/c by Daylite of G.B." It thus obtained an increase of surplus by \$250,000 without any expenditure of money.¹³ That this was a gift at the expense of Daylite of Grand Bahama, and of course ultimately at the expense of Atlantic Acceptance, was made abundantly clear by the fact that Eugene Last, on behalf of his company, signed a release in favour of the Hotel Company¹⁴ absolving it from all claims in respect of the \$250,000 payment made on its behalf. The only reasonable explanation is that Daylite of Grand Bahama made this gift, the first of three, quite apart from advances which were treated as receivable for the next fifteen month period, to enhance the value of the stock of the Lucayan Beach Hotel Company.

¹²Exhibit 2622 (s).

¹³Exhibit 2848.

¹⁴Exhibit 2623.10.

Public Offering of the Lucayan Beach Hotel Company

The prospectus which accompanied the public offering of ordinary shares of the Lucayan Beach Hotel Company Limited has already been referred to.¹ It is dated May 29, 1964 and offered 300,000 ordinary shares with a par value of half-a-crown, of which 100,000 were to be issued from the treasury and 200,000 outstanding shares offered by a "shareholder" through the sole agency of Barrett, Goodfellow & Co. at \$6.50 per share. The shareholder was Associated Canadian Holdings, and its 200,000 shares represented the 100,000 deposited with British Mortgage & Trust as security for the loan of \$1,200,000; these had been split two for one pursuant to a special regulation of April 2, 1964. The company's board of directors had undergone some changes: Peter D. Graham had resigned on December 31, 1963, and Charles T. Craddock on May 27, 1964. Most significant was the resignation of C. Powell Morgan, recorded on May 22, so that his name did not appear in paragraph 4 of the prospectus where the directors are given as Cecil Manus, Allen Samuel Manus, Erwin Lane and Alexis Obolensky, Cecil Manus being shown as chairman of the board and Allen Manus as president. The minutes of company meetings in the possession of the Commission indicate that on May 26 two other directors, as well as Obolensky, replaced those who had resigned in the persons of Milton E. Mermelstein and S. T. Lesser. These names do not appear in the statutory information section of the prospectus. The nature of the agreement between the company and Associated Canadian Holdings with Barrett, Goodfellow & Co. was set out in paragraph 12, in which it was said that the net proceeds for the sale of shares would be \$6 per share sold, and that the only persons having a greater than 10% interest in Associated Canadian Holdings were Manfred Kapp, Mildred Lucinda Morgan and Jack Tramiel. The share records and minutes of Associated Canadian Holdings² show that Mrs. Morgan was the owner of only 15,000 common shares out of a total outstanding of 315,600 and 37,500 preference shares out of a total outstanding of 789,000. She was therefore clearly not the owner of more than 10%, but C. P. Morgan was the registered owner of 52,237 common shares and 130,590 preference shares. The source of this information cannot be definitely attributed to Allen and Cecil Manus, who signed the prospectus on behalf of themselves and their two fellow directors, Lane and Obolensky, but is part of an obvious design to conceal the appearance of C. P. Morgan's name in a document filed with the Ontario Securities Commission and circulated in the financial community of Toronto. No liability to the Grand Bahama Development Company in respect of the extras, settled at \$250,000 and paid for by Daylite of Grand Bahama on May 26, is shown or referred to. Pre-

¹Exhibit 181.

²Exhibits 213-6.

opening expenses for the hotel appeared on the financial statement as at January 31, 1964 in the amount of \$240,401, as organizational and staff expenses incurred before the hotel opened.

The public issue of shares contemplated in the prospectus was carried out, and is illustrated by the handwritten record contained in Barrett, Goodfellow & Co.'s underwriting file.³ Of the 300,000 shares sold, Daylite of Grand Bahama bought 200,000. Of the remaining 100,000, 75,590 shares were bought by the following persons or corporations, all except Ocean Holdings Limited associated with Atlantic:

"Canadian Nevil Enterprises Limited	10,000
Dallas Holdings Limited	7,000
Shirley Feldman	4,000
Marty Fruitman	2,000
Albert M. Lando	2,000
Ruth Levinson	2,170
B. L. McFadden	2,000
N.G.K. Investments Limited	17,320
Nathan Saunders	5,000
Ocean Holdings Limited	20,000
Harry Wagman	3,500
Chartered Management Consultants of Canada Limited	600"

However the share records of the Lucayan Beach Hotel Company do not show these persons and companies as registered shareholders, but indicate that 50,964 shares were registered in the name of Mrs. Mildred Morgan on June 10, 1964 and 10,000 shares each in the names of W. L. Walton and Harry Wagman on June 9, which accounts for all but 4,500 shares, generally speaking in the names of brokers. The Lucayan Beach Hotel Company received for the sale of its 100,000 treasury shares the net amount of \$600,000 in Canadian funds, of which \$461,000 was contributed to pay for the shares registered in the names of Mrs. Morgan, Walton and Wagman.

The sale of the 200,000 shares offered by Associated Canadian Holdings is even more suggestive and requires close examination. Four confirmation notices from Barrett, Goodfellow & Co.,⁴ each dealing with the sale of 50,000 shares on July 16, show that the total sum required to pay for 200,000 shares is \$1,210,000 for a net yield to Associated Canadian Holdings of \$1,198,000, representing a price of \$6.05 per share, less deduction of transfer tax. The sale was recorded by Barrett, Goodfellow & Co. as being to E. D. Sassoon Banking Company Limited and was confirmed in that amount.⁵ The day before, Aurora Leasing

³Exhibit 2638.1.

⁴Exhibit 2638.3.

⁵Exhibit 2638.4.

had borrowed \$1,300,000 from Commodore Sales Acceptance, and on the same day paid \$1,210,000 to the Canadian Imperial Bank of Commerce by a cheque signed by J. C. Laidlaw and W. E. Pahn.⁶ Aurora Leasing recorded this advance as a loan to Daylite of Grand Bahama. The cheque to the Canadian Imperial Bank of Commerce marked "Draft No. 1817976—Barrett, Goodfellow & Company", and the brokers' credit notice issued to "E. D. Sassoon Banking Company Ltd." gives particulars of the amount credited as "draft Cdn. Imp. Bank Comm." Barrett, Goodfellow and Co. had a ledger card for E. D. Sassoon Banking Company⁷ which is marked "account deleted", and underneath, almost completely erased, can be distinguished the name "Sassoon" and the words "Attention B. Larbelestier, Nassau, British West Indies." That this is not a mere inadvertence is shown by a confirmation notice with respect to the purchase of the 200,000 shares addressed to Sassoon's, displaying the same number as the number on the ledger card. Having been credited with \$1,198,000 by Barrett, Goodfellow & Co., Associated Canadian Holdings, also on July 15, issued a cheque to British Mortgage & Trust Company for \$1,241,885 according to its general ledger,⁸ the additional \$41,885 apparently being interest on the loan. This payment had the effect of paying off British Mortgage & Trust and releasing the \$1,200,000 plus interest pledged with the trust company by the Lucayan Beach Hotel Company. From the records of the former comes a certified cheque in the amount of \$1,200,000, drawn on it in favour of Daylite of Grand Bahama by the Lucayan Beach Hotel Company, per Allen S. Manus.⁹ This cheque was deposited to the credit of Daylite of Grand Bahama at the Bank of Nova Scotia leaving \$20,443.03 on deposit with British Mortgage & Trust to the credit of the Lucayan Beach Hotel Company.¹⁰ Then Daylite of Grand Bahama issued a cheque on its Canadian funds account at the Bank of Nova Scotia, No. 5160, and the cash receipts book of Aurora records a payment of \$1,200,000 against its loan to Daylite of Grand Bahama which was paid back to Commodore Sales Acceptance. All of these transactions took place on July 15. Out of the balance of \$100,000 Aurora made a separate advance of \$50,000 to Daylite of Grand Bahama which treated this as an additional loan to itself and paid it to Associated Canadian Holdings, which in turn recorded it in its cash receipts book¹¹ as payment for financial advisory services. This payment more than took care of the amount of interest which Associated Canadian Holdings had been required to pay British Mortgage & Trust.

⁶Exhibit 2855.

⁷Exhibit 2857.

⁸Exhibit 2165.

⁹Exhibit 2858.

¹⁰Exhibit 2859.

¹¹Exhibit 2165.

The 200,000 shares of the Lucayan Beach Hotel Company, which were the subject of these swift transactions, were delivered to Harry Wagman, according to a delivery slip of Barrett, Goodfellow & Co., on August 26, 1964.¹² It refers to the shares as having been bought for the account of the Sassoon bank and is signed by the recipient. Then, on September 8, the assistant manager of the Sassoon bank wrote to Barrett, Goodfellow & Co. referring to their statements dated June 30 and July 31 in connection with two accounts, asking for further details and saying: "You will appreciate that no one can open an account in our name without our express approval. We therefore accept no responsibility for these transactions". R. A. Goodfellow replied in a letter dated September 16,¹³ alluding to the two transactions in the following words:

"The Seven Arts Productions trade was executed on the instructions of Mr. Allan Manus. The stock was delivered to us through the Head Office of The Toronto-Dominion Bank in Toronto, and we were given the impression the stock was from your bank.

On the 200,000 Lucayan Beach Hotel 2/6d trade, the client should have been shown as Dalite of Grand Bahama. The trade was consummated on the instructions of Mr. C. P. Morgan, who acted on behalf of Mr. Basil L. Arbelestier. These transactions have been cleared."

It is difficult to know what to say about all this camouflage, except to express the conviction that no money came from the E. D. Sassoon Banking Company, although some effort was made by someone who purchased a draft at the Canadian Imperial Bank of Commerce to create verisimilitude in the records of Barrett, Goodfellow & Co. It is possible, from the tenor of Goodfellow's reply to which no answer was apparently made, that Larbelestier had acquiesced in Morgan's use of the bank's name, but that Morgan had neglected to ensure that confirmation notices were not sent out.

Although Barrett, Goodfellow & Co. had only received five cents per share as commission on the Associated Canadian Holdings block, they were entitled to receive fifty cents per share from the treasury block of 100,000. This was not, however, retained, for on July 21 they issued a cheque in the amount of \$33,333.33 to McLean, Campbell, Rogers, Lyons & Kerr, their own solicitors, who in turn paid it to N.G.K. Investments, which, over the signature of C. P. Morgan as president, acknowledged its receipt to Barrett, Goodfellow & Co. as "payment in full of the finder's fee due to us in connection with the public offering in Ontario of the shares of Lucayan Beach Hotel Company, wherein you acted as agent for the Company and a group of shareholders in effecting the

¹²Exhibit 2861.

¹³Exhibit 2862.

offering." In the result Barrett, Goodfellow & Co. got only \$26,666.67 of which they had to pay \$6,443.50 to other brokers by way of split commissions.

The effect of all this is an interesting example of what Morgan could do with unchallenged control over the funds of Atlantic Acceptance. The \$1,200,000 portion of the \$1,300,000 loan made on July 15 by Commodore Sales Acceptance to Aurora Leasing simply went around in a circle and back to Commodore Sales Acceptance, and in its travels paid off the loan of Associated Canadian Holdings from British Mortgage & Trust Company, releasing the moneys on deposit to the Lucayan Beach Hotel Company to pay Daylite of Grand Bahama the \$1,200,000 owed to it for the construction of the motel on Hong Kong Island. The Lucayan Beach Hotel Company put up no money, because on the day of its receipt Daylite of Grand Bahama paid it to Associated Canadian Holdings to acquire the 200,000 shares. The Hotel Company actually received the \$600,000 for its 100,000 treasury shares and deposited this amount in its account No. 10001 at British Mortgage & Trust.¹⁴ By the end of August 1964, when the issue of shares had been completed, Commodore Sales Acceptance was owed by Dalite Corporation \$3,983,178, a substantial part of which had been advanced to Daylite of Grand Bahama to build the motel, but when this company got its money from the Hotel Company it invested it in shares of the latter without making any payment on the indebtedness to Commodore Sales Acceptance. The 200,000 shares however were physically in the possession of Harry Wagman and eventually in the hands of the Montreal Trust Company, as receiver and manager of Atlantic Acceptance, which treated them as having been pledged as security for loans made by Commodore Sales Acceptance, although there was no formal documentation to support this assumption.

Daylite of Grand Bahama Foots the Bill with Atlantic Funds

Morgan was now on the rack to which he had been expertly bound by Allen Manus. While Manus enjoyed the amenities of Lucayan Beach, his specially-furnished apartment in the "Lanai" portion of the hotel and a presidential yacht and aeroplane, Morgan had to find the real, as distinct from illusory money to run the hotel and pay for the deficiencies of its management, of which, according to all accounts, Manus was the principal cause. But, for the credit of the enterprise and any possible chance of disposing of it profitably, it was important that the unsatisfactory record of operations should be studiously concealed. Daylite of Grand Bahama, being on the spot and dependent upon the loans made by Commodore Sales Acceptance to Dalite Corporation for every penny

¹⁴Exhibit 2830.

it received, was a convenient vehicle for carrying the Hotel Company's load. Some examples of this must be given. On July 2, 1964 Daylite of Grand Bahama paid Commadore Sales Acceptance \$300,873.55 which the latter recorded as a payment received direct from the Lucayan Beach Hotel Company, placing receipt of the money to the credit of Dalite Corporation. The amount of this payment was apparently derived from a loan made to Daylite of Grand Bahama by Barclay's Bank in Nassau, according to a personal letter to C. P. Morgan dated April 7 from Terence Irish, the bank manager, addressed to "Powell Morgan, Dalite Corporation (Canada) Limited, 75 Brown's Line, Toronto 14", with the eventual approval of the Exchange Control of the Colony, in the amount of £100,000.¹ The letter refers to the fact that the bank's solicitors are preparing a debenture which must have taken some time to engross, because the bank's loan account² does not show the money as having been advanced until July 1. A memorandum from Morgan's files, dated December 15, 1964, purporting to be a summary of advances to and payments made on behalf of the Hotel Company by Daylite of Grand Bahama³ has, under a column head "repayments", an entry of \$300,873.55 indicated as having been made on July 2, the narrative explanation being "repayment Br. Mortgage." There is no explanation of this reference which appears to have been made in error, since the records of British Mortgage & Trust do not disclose any payment from the Lucayan Beach Hotel Company at this time. There is, however, evidence of an unusual expedient adopted to create the illusion of repayment; in Wagman's records there is a cheque made by the Hotel Company to Daylite of Grand Bahama in the amount of \$304,050 in U.S. funds, dated June 22, 1964 but not negotiated. Since it was drawn on the company's account No. 10001 at British Mortgage & Trust, the cheque could not have been met in any event, because there was on that date a balance of only \$100 at credit. There are three other cheques, the first dated July 22, 1964 for \$36,250 in U.S. funds, signed by Manus as president of the Hotel Company, and also payable to Daylite of Grand Bahama;⁴ although at that date there was a balance in the British Mortgage & Trust account of \$148,907.26, there was not sufficient to meet both the outstanding cheques, even though the second one could have been met at any time until August 5 at which date the balance was reduced to \$866.94. The third cheque is dated August 3, 1964 in the amount of \$15,075.45,⁵ similarly signed and not presented. The same is true of the fourth cheque dated September 19 for \$20,000, at which time the balance in account No. 10001 was still \$866.94 and did not

¹Exhibit 2865.

²Exhibit 2866.

³Exhibit 2867.

⁴Exhibit 1074.2.

⁵Exhibit 1074.3.

vary materially from this point onward. During this period the Lucayan Beach Hotel Company was getting funds from Daylite of Grand Bahama, which was in turn getting them from Commodore Sales Acceptance through Dalite Corporation, and these were used to operate the hotel. Eugene Last was becoming increasingly restive under this procedure, since he was constantly at loggerheads with Allen Manus. The total amount advanced in this way to the Hotel Company at November 30, 1964, including interest, was shown on Morgan's memorandum as being \$906,531.55 in U.S. funds.

Masco Construction Company Limited

Reference has already been made to Masco Construction Company Limited and its rôle, both intended and real, must be briefly examined. The company was incorporated on September 6, 1963 as a private company in Ontario for carrying on the business of a general contractor,¹ and a receiving order was made on September 13, 1965. After the resignation of the incorporating directors who were members of the firm of Salter, Reilly, Jamieson & Apple, the permanent directors were Nathan Saunders, Harry Wagman and J. C. Laidlaw, each holding one share, each issued at \$1.² The purpose for which the company was incorporated has been variously described by Morgan on his examination for discovery in the bankruptcy of the company and by Eugene Last president of Dalite Corporation.³ Morgan's account is confusing, as is all the evidence he gave on these numerous examinations prior to his last illness. It contains many half-truths and some outright fabrications. According to him the company was set up to do construction work in the Bahamas, and he admitted that Allen Manus and himself were the principals by virtue of having lent money to Masco in a manner to be described. Originally there were three; himself, Manus and a builder by the name of Radomski from Scarborough, Ontario. Subsequently Radomski withdrew and the project had to be reconsidered. Laidlaw was Morgan's nominee, Wagman was brought in to take up Radomski's interest, and Nathan Saunders was nominee for Manus. This last statement must be measured against subsequent evidence Morgan gave on the examination about Saunders acting for Masco as general co-ordinator between interests of the Lucayan Beach Hotel Company and Daylite of Grand Bahama, and particularly the fact that it was common knowledge at all the construction sites that Saunders was Morgan's man. Last gave a less edifying account of the reason for Masco's existence, when he testified that it was to stand between Dalite Corporation and Daylite of Grand Bahama, the former company to invoice Masco for all

¹Exhibit 416.

²Exhibits 254-5 and 416.

³Evidence Volume 64, pp. 8608-10 and Exhibit 3673.

the manufacturing and shipping of materials for the Grand Bahama project and Masco in turn invoicing Daylite of Grand Bahama at a mark-up of 5%, so that Morgan and Manus would profit personally from the whole transaction. With all the advantages attendant on incorporating a construction company to do real work in the Bahama Islands in the Colony itself, and with Morgan's *modus operandi* in this matter evident throughout all the transactions which the Commission has had to consider, it is obvious that Last's explanation of the intended role of Masco, an Ontario company, is the right one. Further according to Last, when Morgan and Manus realized that sales by Dalite Corporation to Masco would attract Canada sales tax, and sales by the former by way of export to a Bahamian company would not, he was told to "forget about Masco" and arrange to ship direct to Daylite of Grand Bahama. There were additional difficulties mentioned by Last in connection with the certification of goods going in bond through the United States. These went in trailers shipped on railway flat-cars to Fort Lauderdale, thence by barge to Freeport, and the interposition of Masco would have required real operating expenses on the part of the latter.

Nevertheless the financing proceeded to a point. A handwritten balance sheet, from the Walton, Wagman & Co. file on Masco,⁴ as at July 31, 1964,⁵ shows "deferred liabilities—loans payable" of \$200,000, indicating that the company had borrowed that amount. The company's deposit book shows that on October 13, 1963 the sum of \$100,000 was deposited in its bank account by W. R. Salter, arising apparently out of an arrangement, recorded in his handwriting, containing instructions for the incorporation of the company.⁶ It shows the participants as being "(1) L.B. Hotel (2) Associated Canadian Holdings Ltd. (Morgan) and (3) Z. W. Radomski." Each party was to contribute \$50,000 at once, in thirty days' time, and again in sixty days' time. Radomski was to be president, Saunders vice-president and W. R. Salter secretary-treasurer, and from this arrangement it is clear that Salter must have been representing his client Allen Manus, and Saunders C. P. Morgan. This memorandum is dated August 19, 1963, but the picture changed owing to Radomski's stopping payment on the cheque for \$50,000 which he had given to Salter, who had held this, together with one from the Lucayan Beach Hotel Company and a third representing Morgan's contribution, none of which were negotiated. Another memorandum of Salter's, dated August 22,⁷ refers to the decision of Morgan and Manus to go ahead with Masco (then called Marr Construction Company) and a new arrangement for the subscription was made. A payment of \$50,000 was received for the account of Ocean Holdings Limited, of

⁴Exhibit 726.

⁵Exhibit 726.1.

⁶Exhibit 2612.1.

⁷Exhibit 2612.4.

which Allen Manus was president, through E. T. Lynch & Co., and Ocean Holdings was able to make this payment because it had sold 10,000 shares of St. Lawrence Industries to C. P. Morgan on August 20 through E. T. Lynch & Co., the money coming from Morgan's account with Barrett, Goodfellow & Co.⁸ Morgan's contribution came from the Trio account at the Guaranty Trust Company of Canada (No. 13324), according to the evidence of its passbook⁹ and a cheque book,¹⁰ on September 11, and the contribution of the Trio account was made possible by its holding a profit of \$140,000 made on the transaction of July 10, 1963, discussed at length in Chapter VIII. It was intended that Morgan and Manus would each put up an additional \$50,000, but although another cheque was written on October 17 on the Trio account for \$50,000 it was not negotiated, and the second contribution came from the Lucayan Beach Hotel Company which, in its prospectus dated May 29, 1964,¹¹ shows an amount of \$139,233 designated as a loan receivable, and the approximate equivalent of \$150,000 in Canadian funds. The question of the participation of the Hotel Company in Masco Construction Company was raised in a letter dated September 22, 1964, to Jules Kofman, of the Perlmutter, Orenstein firm, by Edward R. Fingland of Price, Waterhouse & Co. in Nassau, dated September 22, 1964, which should be quoted in part.¹²

"I had a long meeting with Mr. Alan Manus in Freeport last week as we are trying to straighten out the accounts of the hotel at 31st July. I understand you can answer two of my queries which are:—

- (1) Apparently the company made a profit of \$200,000.00 by selling an option. This, I believe, had something to do with a construction company at Freeport. Nobody here has any information in regard to this.
- (2) As you know, a deposit was set aside with the Morgan Guaranty Bank for the construction of the Lucayan Village. The hotel are suppose to be keeping the books for this subsidiary company but, so far, nothing has been done. I shall be glad if you will tell me what payments have been made from this deposit and whether you have been keeping any books in connection with this company."

Kofman's reply, specifically on these points, was as follows:

"In reply to your letter of September 22nd, 1964 we advise as follows:

1. On the balance sheet of the hotel as at January 31, 1964 there was a loan receivable in the amount of \$139,233 which was the

⁸Exhibit 504.

⁹Exhibit 807.

¹⁰Exhibit 2881.

¹¹Exhibit 181.

¹²Exhibit 2623.11.

U.S. equivalent of \$150,000 Canadian funds. It had been intended that the hotel participate in a construction company in Freeport, the name of which was Masco Construction Limited. Subsequently, an agreement was made whereby the hotel surrendered its rights to participate and received \$200,000 in settlement of all claims.

2. The name, Morgan Guaranty Bank, is not a familiar name to us, however, we believe that you must be referring to the amount which was deposited with the British Mortgage & Trust Company in Toronto of \$1,200,000 Canadian funds."

This payment of \$200,000 was received by the Lucayan Beach Hotel Company but not credited against the loan receivable. Instead it was added to the capital and contributed surplus account and described as "sale of rights in Masco Construction Company of construction contract—joint venture—received from Daylite G.B. by set-off against advances". Since the loan to Masco by the Hotel Company remained outstanding, this is apparently the second example of a gift to it by Daylite of Grand Bahama, which had no interest in Masco itself, to its own detriment. By the end of June 1964 Commodore Sales Acceptance recorded \$3,287,624 as loans outstanding to Dalite Corporation in respect of the Lucayan projects; yet every effort was being made to enhance the appearance of the Hotel Company's financial statement, and it is on the record, in the shape of a handwritten memorandum of a telephone call with Albert A. Shelman made by W. R. Salter, and dated September 1, 1964, that attempts were again being made to obtain financing for the hotel complex, the memorandum reading, "Powell Morgan in England to try and get \$9,000,000 Barclay's first mortgage on everything, hotel—marina—apartments—motel."

Other aspects of the activity of Masco Construction Company under Morgan's direction have already been mentioned, particularly the activity of its trading account with Barrett, Goodfellow & Co. in relation to purchases and sales of the stock of Commodore Business Machines and Analogue Controls. It was to take a further step in March 1964 which resulted in commutation of rental payments to Daylite of Grand Bahama for the 110 efficiency units, turned over to the Lucayan Beach Hotel Company at this time, in respect of which the lease agreements between the former as lessor and the latter as lessee have already been noticed. By cheques in the amount of \$410,400, dated January 31, 1964,¹³ and for \$342,000 on March 9,¹⁴ drawn in favour of Daylite of Grand Bahama by Masco Construction and signed by Nathan Saunders and H. Wagman, an aggregate amount of \$752,400 in Canadian funds was paid in exchange for notes of Daylite of Grand Bahama with a face

¹³Exhibit 2885.

¹⁴Exhibit 2886.

value of \$990,000, which Masco discounted with Commodore Sales Acceptance for \$792,000, thus making a net profit of \$39,600 or exactly 5% of the amount advanced. The notes were payable in U.S. funds, and it appears from the "instalment notes receivable" ledgers of Commodore Sales Acceptance¹⁵ in connection with this transaction that there were two ledger accounts, numbered 1 and 2, showing original entries of \$540,000 and \$450,000 in U.S. funds respectively. The collateral ledger¹⁶ shows notes in the amount of \$900,000 and sixty additional notes, each bearing the face amount of \$1,500 and making a total of \$990,000 in U.S. funds, lodged as security with Atlantic Acceptance Corporation. These notes,¹⁷ the first of which is payable on February 15, 1964, and the last on January 15, 1969, were drawn in favour of Masco Construction Company by Daylite of Grand Bahama for which Eugene Last signed, endorsed over to Commodore Sales Acceptance by Nathan Saunders and J. C. Laidlaw for Masco, and further endorsed for the Lucayan Beach Hotel Company by Allen S. Manus. The leases, which were at the same time assigned to Commodore Sales Acceptance, were thus in effect discounted by Daylite of Grand Bahama, and if it had done so directly it would have received \$39,600 more than it did as a result of the interposition of Masco. On his examination for discovery Morgan sought to justify the retention of this profit by Masco as recompense for the supervisory work done by the company on the Lucayan projects in the person of its president Nathan Saunders, about the efficacy of which there are a number of opinions, mostly derogatory. He was surprised that only the \$90,000 worth of \$1,500 notes were endorsed by Manus for the Hotel Company, asserting that this endorsement was supposed to have been made on all the notes totalling \$990,000. At June 17, 1965 Masco owed Commodore Sales Acceptance \$817,427.63, and Morgan contended that Masco should be relieved of its indebtedness to Commodore Sales Acceptance because of the subsequent purchase by the Hotel Company of the efficiency units, a transaction which is yet to be described. His reasons, given not very lucidly in answer to questions put by Mr. H. R. Poultney, appearing for the trustee of the bankrupt estate of Masco, were as follows:¹⁸

"A. As far as I am concerned the notes that are outstanding and receivable in Masco at the present time should not be in existence, they should be cancelled because they were—when the Hotel Company bought the property they took over the earning asset which is the employees quarters. Masco should be relieved of its liability to Commodore and the Hotel Company should be relieved of its debt to Masco as part of the

¹⁵Exhibit 2887.

¹⁶Exhibit 2888.

¹⁷Exhibit 2889.

¹⁸Exhibit 3673.

lease or the guarantee. Technically what should have happened is that when the Hotel Company bought physical assets they bought them with the lease intact, therefore, in essence at the present time Masco should be continuing to collect from the Hotel Company the rent each month and turn around and pay it over to Commodore Sales Acceptance each month, that is what should be happening right now and therefore as far as Commodore is concerned it is like taking it out of one pocket and then the other, what they should do is just reduce the indebtedness or increase the indebtedness that is owing by Dalite and reduce the indebtedness that is owing by Masco, it would be the same, six of one and half a dozen of the other."

According to Eugene Last, Allen Manus used the investment of the Lucayan Beach Hotel Company in Masco Construction Company as an offset against advances made to it by Daylite of Grand Bahama, although this explanation does nothing to make compatible the \$200,000 added to the Hotel Company's contributed surplus and the loan receivable from Masco which it showed in the amount of over \$139,000. The unsatisfactory state of the accounts of the Hotel Company must inevitably obscure the true nature of these transactions, except in so far as they tend to confirm the general impression that Atlantic Acceptance indirectly put up all the money in the end and the Hotel Company none.

Morgan's Dilemma: The Displacement of Allen Manus

Two main considerations were henceforth to govern the actions of C. P. Morgan in the Lucayan situation, once he had taken the measure of Allen Manus. The first was to displace the latter as effective head of the Lucayan Beach Hotel Company and to get the management of the hotel under his own control, and the second to secure long-term financing for the whole enterprise to supersede the haphazard accumulation of unsecured and partly-secured loans which had sprung from the original commitment to build the efficiency units. It has been seen that Atlantic's position in the equity of the Lucayan Beach Hotel Company was insufficient to give it effective control because of the existence of the debentures given to Freeport International Company. Another item of Morgan's complaint against Manus was what he described as the careful concealment of the terms of the mortgage given by the Hotel Company to the Development Company which was payable in only two years' time. By the end of December 1964 Atlantic's involvement, through loans and investments made by subsidiary and associated companies, reached a level of \$9,485,000, over \$6,225,000 of which had been advanced to Dalite Corporation for further advance to Daylite of Grand Bahama, and these amounts do not include interest accrued on these

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loans. Since the commitments and performance of Dalite Corporation and Daylite of Grand Bahama are to be discussed in some detail hereafter, it is sufficient to say that during 1964 it had built forty additional apartments and was engaged in building the marina and the 150-room motel. There were also other jobs in progress such as the Drivers' Club, a sewage disposal plant and a laundry. The construction of the motel was, of course, crucial to the agreement between the Hotel Company and the Development Company, and everything could be said to hinge on its completion. Writing on November 10, 1964, a correspondent, signing himself "Bob", sent a private and confidential letter to C. P. Morgan, with a copy to Harry Wagman, saying generally, under the heading of "The Marina", that the motel units were complete and some had been occupied by guests of the hotel two days previously. Thus one of the principal difficulties faced by the Lucayan Beach Hotel, that of shortage of revenue-producing accommodation in relation to the costly provision of public space, was in part alleviated. This unidentified correspondent, who was probably R. W. Pollock, a chartered accountant employed by Chartered Management Consultants to keep an eye on the various jobs undertaken by Daylite of Grand Bahama, had, amongst other things, the following to say in his letter which gives a good idea of the atmosphere in which the hotel was operating in this period of extensive construction:¹

"Before summarising in detail, the status on each project, I would like to offer comments on the method of operation apparent to me. A great deal of time is lost in the complete lack of co-ordination and planning of detail. Workers are moved from one site to another before completion of any one task. On occasions this situation is caused by lack of materials, but more often than not, the cause is a change of emphasis by management. As a result, no single phase of the Lucaya operation has yet been completed in its entirety, and there is severe local criticism to this effect, particularly with regard to the apartments and homes. It is true that the buildings are completed, but the surrounding area is in the most appalling condition, with rocks, broken glass and garbage still lying around from the original construction. No landscaping had been attempted until a couple of days ago, when again after strong representation by me, a certain amount of clearing up has been started in the area of the 40 houses. I might also add that the entrance to this particular area is a disgrace."

Inside the hotel matters were scarcely in better order, and finally the Grand Bahama Development Company in the person of its executive vice-president, W. P. Fisher, was moved on January 27, 1965 to write to the Lucayan Beach Hotel Company, to the attention of Allen S.

¹Exhibit 2892.

Manus, with copies to Eugene Last and C. P. Morgan, the following letter, in which the threatening implication is clear:²

“Gentlemen:

The Development Company has received numerous complaints concerning the operation of the Hotel, particularly with regard to the lack of service and inadequate service to guests. These complaints have been received over an extended period of time and have become even more pointed this month.

In the Deed of Covenant between the Grand Bahama Development Company, Limited and the Lucayan Beach Hotel Company, dated 18th January, 1964, paragraph 3, sub-paragraph 1, reads as follows:

“(1) To observe, perform and comply with all the covenants, provisions and conditions in the Government Agreement contained, and on the part of the Port Authority thereby to be observed or performed so far as the same relate to the Hotel Company’s land or to any part thereof or to anything done, carried on or omitted thereon or in respect thereof or in respect of any operation or business undertaking or enterprise of any kind at any time carried on by or on behalf of the Hotel Company within the Residential Area and in particular and without limiting the generality of the foregoing.”

In the Government Agreement with the Port Authority, supplement dated 11th July, 1960, paragraph 1, sub-paragraph 1, contains the provision that a hotel of not less than two hundred (200) bedrooms with all reasonable amenities in the Port Area be constructed and, upon completion of the hotel, to be furnished as a first class De Luxe Resort Hotel, and thereafter operated in accordance with the highest standards obtainable for the operation of like De Luxe Resort Hotels in the U.S.A.

From the above it is apparent that this is not merely a matter of local concern, but has implications of serious involvement with the Government of the Bahamas.

It is necessary, therefore, that the Development Company insist on exact compliance with the Deed of Covenant with regard to the operation of the Hotel.”

It was obviously time for C. P. Morgan to take the action which he had told Eugene Last, and others who had complained of Manus’s behaviour, was inevitable, and “have Atlantic take over the hotel”.

To do so a Bahamian company was formed, called L. B. H. Management Company Limited, on or about February 5, 1965.³ The incorporating shareholders were C. P. Morgan, Jack Tramiel, Baron Seband von Rheden-Rheden, Wolfgang Wirth and Bernard A. Thompson, a

²Exhibit 2891.

³Exhibit 2588.

lawyer in the office of Peter D. Graham, who were each issued a £1 ordinary share.⁴ The Baron and Wirth have been identified before as a director and the general manager respectively of the Hugo Oppenheim und Sohn Bank in Berlin, and were brought to Lucaya by Tramiel to whom Morgan had turned for advice in this particular crisis. Tramiel, in his testimony before the Commission, was vague about the dates of his visits to the hotel, but, from other evidence which concerns the Berlin bank, his first visit must have been in November 1964 and the second at about Christmas time of that year when he took his wife. On the second occasion, because of the interest of Associated Canadian Holdings in Five Wheels of Grand Bahama and Daylite of Grand Bahama, he made enquiries from people on the spot and soon got the impression that something was wrong. Eugene Last and Allen Manus were quarrelling and the latter, in Tramiel's words, appeared to be running a private club for himself, and to be entertaining people from the United States on a large scale at the hotel's expense. Upon his return to Toronto in January he reported what he had seen and heard to Morgan. The service had been very poor and there was a shortage of help. Morgan confessed that he was troubled and asked Tramiel to help him. He indicated that he wanted to get rid of Manus, telling Tramiel that he was in a position to do so. Tramiel agreed to spend a few days every month at the hotel, where Manus told him in an early consultation, "I am dealing directly with Morgan, just get to hell out". Nathan Saunders confided in Tramiel and this did nothing to improve his relationship with Eugene Last. Tramiel's solution was to bring in von Rheden, who had apparently convinced him that he knew something about the hotel business, and thus L. B. H. Management was formed. Manus evidently had no alternative but to give up control of the operations of the hotel, because it had no money and he was in no position to supply it. The contract between the Lucayan Beach Hotel Company and Dinkler Management Corporation, not yet a year old, was terminated, and by an agreement dated March 6, 1965⁵ the Hotel Company rented the hotel to L. B. H. Management for a period of eight years and ten months at a monthly rental of \$41,666.67, with the provision that in the second and subsequent years of the term of the lease half the net profits of L. B. H. Management were to be paid to the Hotel Company. L. B. H. Management bound itself to pay all of the outstanding accounts owed by the Hotel Company, and took over all its accounts receivable, on the understanding that if there were an excess of accounts receivable over accounts payable it would reimburse the latter. The rentals of the casino and the twelve stores in the hotel were excluded from this provision, and paragraph 18 of the agreement provided that the term granted to L. B. H. Management was

⁴Exhibit 2588.

⁵Exhibit 2893.

subject to the mortgage to the Grand Bahama Development Company, and the debentures given to Freeport International and assigned to Cecil Manus for \$1,200,000. As an additional inducement, and one that Allen Manus could scarcely resist, L. B. H. Management prepaid the first year's rental in the sum of \$500,000 U.S. funds, although the available records of the company show no trace of this very substantial item. Commodore Sales Acceptance once more provided the money, recording it as a loan in the amount of \$542,000 in Canadian funds, of which \$540,000 was converted into U.S. funds and was deposited on April 30, 1965 in an account at British Mortgage & Trust Company, No. 10050.⁶ Thereupon L. B. H. Management drew an undated cheque on this account which was nevertheless paid and deposited to the credit of the Lucayan Beach Hotel Company on April 30.⁷ This cheque, signed for L. B. H. Management by Jack Tramiel, was deposited in the Hotel Company's British Mortgage & Trust account No. 10001,⁸ withdrawn by it on the same day and paid to the Daylite of Grand Bahama account at the Bank of Nova Scotia.⁹ Again on the same day Daylite of Grand Bahama paid the \$540,000 over to Commodore Sales Acceptance which credited its loan account with Dalite Corporation to this extent.

The effect of this transaction was twofold, in that it substituted L. B. H. Management for Dalite Corporation as a debtor of Commodore Sales Acceptance to the extent of \$540,000, and it effected a settlement of the claims of Daylite of Grand Bahama for advances to the Lucayan Beach Hotel Company. The settlement, according to Last's evidence, was negotiated personally between Morgan and Allen Manus, and on April 10 Daylite of Grand Bahama gave a deed of release¹⁰ to the Lucayan Beach Hotel Company in respect of all claims, except those arising out of the obligation to buy the marina, efficiency units and apartments contained in an agreement made and executed on the same day.¹¹ A settlement in this amount was manifestly unfair to Daylite of Grand Bahama, and was recognized to be so by the Montreal Trust Company and the existing board of directors of the Lucayan Beach Hotel Company after Atlantic's default, at which time it was re-negotiated by increasing the purchase price for the marina and apartments by \$400,000. A reconciliation of advances by Dalite Corporation and Daylite of Grand Bahama to the Hotel Company, from the beginning to August 31, 1965, and repayments, real and notional, by the latter, was entered in evidence¹² and may here be conveniently introduced. Amounts are shown in United States funds.

⁶Exhibits 2894-5.

⁷Exhibit 2896.

⁸Exhibit 2897.

⁹Exhibit 2860.

¹⁰Exhibit 2914.

¹¹Exhibit 2908.

¹²Exhibit 3189.

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"(1) Advances per existing records of Daylite of

Grand Bahama		
General advances—1964	\$643,000.00	
Payment of utility bills	115,610.91	
Sundry payments	23,684.38	
Net advances—January 1965	94,500.00	
Payment to Grand Bahama Development Co.	250,000.00	
		\$1,126,795.29
Additional advances recorded by the hotel		
Z.I.A., rent	10,896.91	
Advance through British Mortgage and Trust Co.	55,555.56	
		66,452.47
Total advances billable by Dalite		1,193,247.76
Other charges—employee housing rentals		101,500.00
—tennis club house		17,350.00
		1,312,097.76

(2) Less: Repayments per Daylite records

April, 1965 settlement for cash	500,000.00
Write-offs—re Masco participation	200,000.00
—re Development Company settlement	250,000.00
	950,000.00

Less: Additional repayments per the Lucayan Beach Hotel

January 1965 cash repayment .. \$	32,000.00
Cheques drawn on British Mortgage and Trust Co.	150,000.00
1963 advance to Masco Construction	139,232.67

321,232.67 1,271,232.67

(3) Balance written off

\$ 40,865.09

- (1) This excludes payments of \$94,310.06 to A. Manus for securities and also any interest charges on the whole account.
- (2) This excludes a Barclay's Bank mortgage payment of \$278,584.84 which did not constitute a hotel repayment on the advance account.
- (3) There is an additional write-off of \$15,074.45 by the hotel which represents an error in their accounting."

L. B. H. Management Limited and Baron von Rheden

L. B. H. Management did not do any better in running the Lucayan Beach Hotel than its predecessors and, according to Chesler, Baron von Rheden was a conspicuous failure as the manager of the hotel. Von Rheden's account was given to the Commission on August 6, 1966 at his estate at Rheden uber Elz near Hannover.¹ Tramiel had discussed with him the difficulties which had been encountered in operating the hotel as early as January 1965, and expressed his desire to get rid of Manus. Subsequently he asked von Rheden to come with his wife and daughter to Miami on March 3, and the von Rhedens were met there by Morgan and Tramiel and their wives, going thence to Freeport, where they were

¹Commissioner's notes on conversations in Germany.

met by Manus and "luxuriously installed" at the Lucayan Beach Hotel. Although von Rheden had believed that he would only stay for a period of a week, he found himself in the middle of negotiations for the establishment of L. B. H. Management of which he learned he was to be president and an equal shareholder with Morgan and Tramiel, requiring a contribution of \$60,000 in the form of an option if he were unable to pay for his shares forthwith. It was apparently at von Rheden's suggestion that Wirth was made a director of the new company. After having examined the books of the hotel he concluded that Manus had incurred large expenses for his own account, including those of his private aircraft with its own pilot, a boat with its own master and a Lincoln Continental car. Manus had drawn heavily on the hotel's stocks of food and liquor and there were apparently innumerable guests of his staying at the expense of the hotel, presumably on the theory that this would promote business. Von Rheden said that he put a stop to this particular aspect of Manus's extravagance.

According to his own relation, von Rheden stayed at Lucayan Beach until early in June, but may well have left earlier. Tramiel said that at first the Baron's relationship with Allen Manus was cordial, but soon both Manus and Morgan were complaining of his management. In the case of Manus this change of attitude was no doubt due to restrictions which the new management had placed on his own activities, and in that of Morgan to the fact that improvements made by von Rheden in the hotel service were as expensive as Manus's promotional activities had been; the desired savings in operational expense did not materialize. Von Rheden at least thought that he had checked the widespread pilfering of food and drink, particularly by the native employees, which had hitherto prevailed, but he found the special status accorded to gamblers flown in from the mainland as difficult to handle as had Manus, who referred bitterly to Myer Lansky's three lieutenants, Courtney, Ritter and Brudener, as "the three mongrels". Morgan and Last reacted predictably to this new intrusion into the affairs of Lucayan Beach which they attributed to the influence of Tramiel. Morgan, with his many preoccupations and his apparent inability, as Tramiel described it, to say no to the last man he spoke to, was apparently quite unable to establish the desired control through L. B. H. Management. He told Tramiel that he had to "go along with Manus" because of the pending underwriting of 3,000,000 shares of Lucayan Beach Hotel Company, which was expected to bring \$9,000,000 into the treasury and relieve Atlantic Acceptance of most of its burden. Morgan, indeed, said in his testimony that Manus made constant efforts to secure permanent financing for the Hotel Company, even with George Weinrott of Cimcony Limited, and was constantly making expeditions to England and Switzerland to get financial backing. None the less three new directors, representing the E. D. Sassoon Banking Company, were added to the board of the Hotel

Company on May 6, and Morgan said that he had secured Manus's agreement to remain only as nominal head and to withdraw permanently from Grand Bahama Island, when the Atlantic default upset all his calculations.

Whatever the understanding was as to contributions to the capital of L. B. H. Management by Morgan, Tramiel and von Rheden, it does not appear from any available record that one was made. Tramiel became convinced that the hotel was not a business proposition and withdrew. For a time, at least, L. B. H. Management was financed by Trans Commercial Acceptance. The Trans Commercial Acceptance ledger dealing with advances to L. B. H. Management shows that from April to June 1965 they were made in the total amount of \$189,372, and that between May 3 and May 31 Commodore Sales Acceptance advanced \$186,425 to Trans Commercial Acceptance. Those by Trans Commercial Acceptance to L. B. H. Management were secured only by notes.² The records of L. B. H. Management available to the Commission were found in the form of monthly statements, one being a handwritten balance sheet, as at March 31, 1965, in the files of Wagman, Fruitman & Lando. A capital investment of \$185,169 is shown, but there is no record of any shares having been issued and no other explanation.³ A profit is shown for the month of March of \$39,742, but for the month of April a cumulative profit of this and the preceding month is shown at \$2,060, so that a loss of approximately \$37,000 must have been suffered in April. The April balance sheet contains no record of the prepayment of rent in the amount of \$500,000 as an asset, nor any record of the debt to Commodore Sales Acceptance in connection with it. Then the statement for May⁴ shows, in the equity section of the balance sheet, the amount of \$186,425 which had been advanced by Commodore Sales Acceptance to Trans Commercial Acceptance, described simply as "Atlantic Acceptance Corporation". Very little sense can be made out of these fugitive records, nor is there much point in attempting to reconcile the amount of \$185,169, shown as a capital investment in March, and the total amount of advances of Trans Commercial Acceptance, secured in turn from Commodore Sales Acceptance, with von Rheden's account of the contemplated \$180,000 capital investment of which he, in any event, was prepared to pay \$60,000 for shares, until Tramiel told him that he had withdrawn from the enterprise. It is sufficient to say that all the money referred to, and perhaps more, came, one way or another, from Atlantic Acceptance.

The last contemporary report on the state of the hotel which has come into the hands of the Commission, describing the state of affairs prevailing after the second impact of a peak tourist season, was pro-

²Exhibits 2898 and 2900-1.

³Exhibit 1091.

⁴Exhibit 1090.

duced by R. W. Robertson, the comptroller of the Lucayan Beach Hotel, addressed to Jack Tramiel and C. P. Morgan and dated May 18, 1965, in which he lists items of operation which he thinks should be corrected and makes a number of suggestions for improvement. Generally speaking, the staff, which he said was too numerous and too highly paid, was still the principal problem. There were too many breakages, too much pilfering, and cleaning was not adequately done. Nor did the staff appear to take any personal pride in the operation and, with some exceptions, its members were poorly turned out and had little regard for their own appearance. He referred, as might be expected, to the "ghost of past management", and suggested that there either be new management of the hotel or that the existing management be given clear authority to make such changes as elimination of unnecessary and undesirable staff, particularly in the sphere of maintenance, the purchase of new uniforms, linen, silver, crockery and so forth, the reduction of maintenance and the vesting of all public relations work in the general manager. He spoke kindly of the work done by Nathan Saunders who was working to improve the security system in the hotel and was in charge of the Drivers' Club, not part of the hotel complex. It should be said that no one else has a good word to say for Nathan Saunders, and his numerous written and verbal communications with the Commission have been remarkably incoherent and vituperative. He was eventually bundled off Grand Bahama Island, together with his family, in a most unceremonious manner by the authorities, and this may have been the culmination of many derogatory and even defamatory references to Allen Manus, Last and others. He seems, like Pollock, to have been a victim of Morgan's inability to make up his mind and give clear directions as to what he expected his representatives to do, and what authority they were to be given. There was also, according to Robertson, trouble with the coloured staff who threatened strikes when any disciplinary action was taken. He concluded by saying, "I think there is a general upgrading of the hotel but it is only a start".⁵

Morgan's Scheme to Liquidate the Debt of Daylite of Grand Bahama

In the meantime Morgan had made a second and parallel effort to relieve the burden resting on Dalite Corporation and Daylite of Grand Bahama, and to supplement the settlement for \$500,000 of the claims of the latter against the Lucayan Beach Hotel Company. It was done with typical disregard for the ultimate position of Atlantic Acceptance and its subsidiary Commodore Sales Acceptance, but Morgan was sensitive about the size of the loans made by the latter to Dalite Corporation, particularly since, as he himself admitted, David Rush, and perhaps other potential blackmailers, knew of the size of the loans and his own

⁵Exhibit 1098.1.

25% interest in the company, the evidence of which will be referred to hereafter. By the agreement dated April 10, 1965,¹ executed for Daylite of Grand Bahama by Jack Tramiel, who had been appointed a vice-president and had, according to Last's evidence, limited authority to dispose of certain assets of the company, and for Lucayan Beach Hotel and Development Limited (as it was now styled) by Allen S. Manus, the marina, the 110 efficiency units and the "apartments", which were an additional 40 one and two-bedroom housing units, constructed during 1964, were sold to the Hotel Company for a total consideration of \$3,880,000 in U.S. funds. The agreement does not recite the proposed transfer of the efficiency units, but comparison of the lot numbers referred to with those enumerated in the first agreement between Daylite of Grand Bahama and the Grand Bahama Development Company, dated November 20, 1963,² shows that they were included under the general description of apartments. The purchaser was to assume the vendor's obligation to repay the Grand Bahama Development Company the \$100,000 which it had advanced originally to Five Wheels of Grand Bahama towards the construction of the marina, an obligation which had been assumed by Daylite of Grand Bahama and not yet discharged, and \$3,780,000 cash, broken down into \$3,500,000 payable forthwith and a balance of \$280,000 after thirty days, during which time the vendor and its subsidiary company, The Lucayan Marina Limited, expected to produce the documents of title to the various lands which it had not yet received from the Development Company. The Hotel Company thus had to pay forthwith \$3,500,000 it did not have. Accordingly, its president, Allen Manus, wrote to the Crown Trust Company in Toronto on the same day, giving it, as transfer agent, "irrevocable authority and direction" to issue 1,250,000 ordinary shares of Lucayan Beach Hotel and Development Limited, at a par value of five shillings each, to Hugo Oppenheim und Sohn of Berlin.³ It was not until June 7 that the trust company's transfer department wrote to Hugo Oppenheim und Sohn announcing the issue, saying that the new share certificates were not as yet available but would be sent when forthcoming, making a note on its copy of the letter to the effect that the certificates were to be delivered to A. G. Woolfrey at Commodore Sales Acceptance.⁴ By this time, indeed on April 30, Commodore Sales Acceptance had duly provided the money by issuing a cheque for \$3,780,000 in Canadian funds to British Mortgage & Trust Company, which was deposited in account No. 4300 to the credit of Hugo Oppenheim und Sohn and was recorded by Commodore Sales Acceptance as a loan to the German bank.⁵ On the same day, by another undated cheque, stamped by British Mortgage & Trust Com-

¹Exhibit 2908.

²Exhibit 2823.

³Exhibit 2909.

⁴Exhibit 2910.

⁵Exhibit 2911.

pany, "April 30", Hugo Oppenheim und Sohn paid Lucayan Beach Hotel and Development the full amount of the deposit of \$3,780,000 in Canadian funds. The cheque, which is on the form provided by British Mortgage & Trust Company at 2200 Yonge Street in Toronto, bears the stamp "Hugo Oppenheim & Sohn Nachf. Berliner Privatbank Aktiengesellschaft", and is signed by Wolfgang Wirth and Frau Ehlitt.⁶

Hugo Oppenheim und Sohn's Blank Cheques

The Hugo Oppenheim cheque was deposited with British Mortgage for credit to the Hotel Company's account No. 10001 and the latter thereupon drew a cheque for this amount in favour of Daylite of Grand Bahama; this was in turn deposited in the recipient's Bank of Nova Scotia account and at once withdrawn by a cheque in favour of Commodore Sales Acceptance, which correspondingly credited its own account with Dalite Corporation. Thus this very large sum returned to its source, and accomplished in its passage the transfer of \$3,780,000 of the indebtedness of Dalite to Commodore Sales Acceptance over to Hugo Oppenheim und Sohn, the reduction of the Hotel Company's liabilities to Daylite of Grand Bahama by that amount and the sale of 1,250,000 shares of the Hotel Company's stock to the German bank which were retained as security by the company that launched it on its circular path.

Without delving too deeply at this point into the affairs of the Berlin bank, it should be said that Wirth told the Commission, at Nuernberg on August 1, 1966, that in February 1965 Jack Tramiel, as chairman of the board of his bank, asked for, among other documents, two blank cheques drawn on British Mortgage & Trust Company. Wirth appeared to be very uncomfortable in his explanation of this transaction, as he might well be, saying that Tramiel had assured him that, since there were only a few hundred dollars of the bank's money at British Mortgage & Trust, the latter would never pay more than the balance at credit and that, since he, Tramiel, was a big business man and from time to time wanted to conceal the source of money which he was using in his international transactions, this extraordinary concession should be made to him. Wirth somewhat lamely concluded by saying that, although Tramiel held power of attorney to purchase securities for the bank in North America, at no time was he authorized to pledge its credit for \$3,780,000, and that no advice was received from Crown Trust Company that it was issuing the Hotel Company shares. In view of the explicit terms of the trust company's letter of June 7, stating the number of shares to be issued to Hugo Oppenheim und Sohn, this is difficult to believe. A long question outlining this transaction was put to von Rheden by Mr. Shepherd on the occasion of the Commission's interview, but was

⁶Exhibit 2912.

never explicitly answered. Dr. Edgar Hochgraeber, who was also interviewed in Nuernberg and who had acted for Tramiel throughout his connection with the bank, had not heard of the transaction until after the Atlantic collapse.

By purchasing 1,250,000 shares of the Hotel Company, or all that remained in the treasury, Hugo Oppenheim und Sohn had acquired $12\frac{1}{2}\%$ of its issued stock at a price of £1, or \$2.80 U.S. per share. The price was quite arbitrary, and contrived to give to the 10,000,000 issued shares of the company a value of \$28,000,000 in U.S. and \$30,-240,000 in Canadian dollars. The shares, however, remained with Commodore Sales Acceptance as security for the unsolicited loan to the German bank. Lucayan Beach Hotel and Development had still to find \$280,000 in U.S. funds to complete its purchase from Daylite of Grand Bahama within thirty days, and this it did by mortgaging the apartments to Bahama Saving & Loan Company through its subsidiary company, the Lucayan Apartments Company, on May 8. The mortgage secured the sum of \$294,000 to produce the required \$280,000. Thus, including the settlement of claims against the Hotel Company for the amount of \$500,000 in U.S. funds or \$540,000 in Canadian funds, Daylite of Grand Bahama was able to reduce the loans of Commodore Sales Acceptance to Dalite Corporation by \$4,320,000, as illustrated on Table 45. While beneficial to Dalite Corporation, this made little difference to Commodore Sales Acceptance which now had Hugo Oppenheim und Sohn as a debtor, together with L. B. H. Management, instead of Dalite Corporation. Tramiel, and whoever else represented Daylite of Grand Bahama on the settlement, completely overlooked the rights to share in the gross receipts of the marina and use of six slips in the docking space, reserved to Five Wheels of Grand Bahama in the original purchase from that company, and the Montreal Trust Company had to settle an action brought by Five Wheels of Grand Bahama after the collapse by surrendering \$100,000 worth of promissory notes to Aurora Leasing made by Five Wheels, and 240,000 of its shares owned by Associated Canadian Holdings.

Atlantic Acceptance in Receivership Finally Acquires Control

Indeed, had it not been for the Atlantic collapse, Commodore Sales Acceptance would have been the real loser as a result of all these manoeuvres, and the displacement of the Manus brothers from control of a majority shareholding in the Lucayan Beach Hotel and Development company as far away as ever without further expenditure of Atlantic funds. As it was, it was left to the receiver and manager to perform the task of removing them which, animated by the conviction that amidst all the wreckage one real asset could be salvaged for the creditors, it did with resolution. The way in which this was done, and the extent to which an additional investment by Atlantic Acceptance was necessary

to acquire 9,398,650 shares out of the total 10,000,000 issued and outstanding, is illustrated by the following schedule:¹

	<i>Quantity of Shares</i>	<i>Paid by Montreal Trust</i>
Shares apparently in possession of Commodore Sales Acceptance as of June 17, 1965 and subsequently taken over by Montreal Trust as Receivable of Atlantic Acceptance:		
Shares registered to Barrett-Goodfellow but beneficially owned by Daylite of Grand Bahama who pledged them with Commodore Sales Acceptance to secure indebtedness of Dalite (Canada) to Commodore Sales Acceptance	647,500	—
Pledged to Commodore Sales Acceptance to secure indebtedness to Dalite (Canada) to Commodore Sales Acceptance registered holders as follows:		
Martin Fruitman	2,000	
Ruth Levinson	2,170	
Albert M. Lando	2,000	
B. L. McFadden	2,000	
Harry Wagman	3,500	
	<u>11,670 old</u>	29,175
Shares or escrow deposits registered to Gee & Co. but beneficially owned by Freeport International. Freeport had pledged them with Aurora to secure their loan with Aurora. Freeport's loan and pledged shares were assigned to Commodore Sales Acceptance to secure indebtedness of Aurora to Commodore Sales Acceptance	1,250,000	—
Shares or escrow deposits beneficially owned by Dallas Holdings who had pledged them with Aurora to secure their loan with Aurora. Aurora had assigned the Dallas loan and the pledged shares to Commodore Sales Acceptance as security for indebtedness of Aurora to Commodore Sales Acceptance. Shares or escrow deposits were registered as follows:		
Dallas	7,000 old (shares)	
Gee & Co.	20,000 old (escrow deposits)	
	<u>27,000 old</u>	67,500
Total shares or escrow deposit certificates taken over from Commodore Sales Acceptance	1,994,175	—
Add:		
Shares taken into custody by Montreal Trust Co.		
Registered to Daylite of Grand Bahama	7,500	
Registered to Valley Farm and Enterprises	5,000	
Re-purchased from Hugo Oppenheim & Sohn by cancelling debt to Commodore Sales Acceptance. The stock power of attorney executed by the German bank for the purpose of effecting registration of the shares to Montreal Trust was signed by Jack Tramiel as chairman of the board	1,250,000	—
Sub-total—total shares physically taken into possession by Montreal Trust Co. without incurring any further cash outlay	3,256,675	

¹Exhibit 2643.

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	<u>Quantity of Shares</u>	<u>Paid by Montreal Trust</u>
Purchased from Allen S. Manus and Cecil Manus pursuant to an agreement dated July 7, 1965 at 60¢ U.S. per share	4,332,395	\$2,820,389
Purchase price includes provision for transfer to Montreal Trust by Cecil Manus of 2nd mortgage debenture of Lucayan Beach Hotel in the amount of \$1,250,000		
Purchased from sundry shareholders at 60¢ per share	559,580	362,825
Acquisition of shares (1,250,000) by paying off \$250,000 loan (plus interest from March 4, 1964 to July 30, 1965) which Mr. C. P. Morgan had with Sassoon against which C. P. Morgan had pledged the shares as collateral	1,250,000	274,599
Total shares obtained by Montreal Trust	9,398,650	<u>\$3,457,813</u>
Number of shares still in hands of sundry other shareholders	601,350	
Total shares issued and outstanding	<u>10,000,000</u>	

On July 7, 1965 J. K. Allison, a vice-president of the Montreal Trust Company, was elected a director of the Lucayan Beach Hotel and Development company, and on July 21 Allen and Cecil Manus, Alexis Obolensky, Milton E. Mermelstein and S. T. Lesser were replaced as directors by Messrs. Rowe, Kerlin, Gaffney and Biddell, the last being president of the Clarkson Company Limited. The three Sassoon directors, elected May 6, remained in office. The work of this board is summarized in a report of the directors to the shareholders of the company, and circulated to the noteholders of Atlantic Acceptance, which is as follows:²

"THE LUCAYAN BEACH HOTEL & DEVELOPMENT LIMITED REPORT OF THE DIRECTORS TO SHAREHOLDERS

The Lucayan Beach Hotel was opened in January, 1964 and as shown by the Financial report dated September 30, 1965 the hotel company has incurred losses as shown therein to that date. During much of the intervening period the hotel properties were leased to a number of different management companies and the operating losses are a combination of the losses incurred while the properties were being operated by the company itself and arising out of the various lease agreements. The most recent of the agreements, that with L.B.H. Management Company Limited, was terminated on September 30, 1965.

It will be noted that the Company's auditors have been unable to express an opinion on the financial statements at September 30, 1965 or on the results of the operations of the Company for the period ending on that date. The present Directors of the Company, most of whom are fairly recent appointees, are similarly not in a position to express any opinion on the results of past operations. The Directors are satisfied that the Balance Sheet at September 30, 1965 fairly reflects the financial

²Exhibit 2916.

position of the Company at that date subject to it being difficult to accurately describe the basis of the valuation of the Company's land, buildings and equipment. Appraisals of the Company's properties and a complete inventory of its equipment and furniture are now in progress and it may be that on the completion of this work the Directors will decide on some different value at which to reflect the Company's investment in its physical properties in its accounts.

In July of this year a number of new Directors joined the Board replacing Mr. Allen S. Manus and his nominees. The new Directors represent Montreal Trust Company in its capacity as Receiver and Manager of Atlantic Acceptance Corporation Limited. At the date of its Receivership, Atlantic Acceptance Corporation Limited through its subsidiary and associated companies owned a minority share interest in Lucayan Beach Hotel & Development Limited. Since that date the Receiver and Manager has substantially increased this investment through the acquisition of additional shares and all of the outstanding floating charge debentures.

Since July the Receiver and Manager has made substantial loans to the Company to permit it to pay arrears of interest on the mortgages, to bring the accounts of creditors into a current position and to finance a program of rehabilitation and improvement in the hotel's physical facilities. These loans have been secured by the issue to the Receiver and Manager of a collateral floating charge debenture in the amount of U.S. \$4,000,000. to be held to secure the balance of the loans which may be outstanding from time to time.

When the Receiver and Manager took over the Atlantic investment in the Company, a number of transactions were in process to acquire the Bell Channel Villas, the Lucayan marina and the Lucayan apartments. All of these transactions have now been completed and the Company or its wholly owned subsidiaries have clear title to all of these properties subject only to the mortgage liabilities reflected on the balance sheet at September 30, 1965.

Arrangements have been made to refinance the first mortgage on the hotel properties which falls due on January 18, 1966. All of the outstanding floating charge debentures are held by the Receiver and Manager which is continuing to advance funds as they are required to place the hotel complex in first class physical condition.

Effective October 1, 1965 the Company has agreed to lease all of the hotel, motel, marina and apartment properties to a company formed by Messrs. J. Crothers and H. Keenan. The lease is to run for a period of five years with the hotel company receiving as its rent a substantial share of profits earned during its term. The Directors look forward with confidence to the successful operation of the hotel properties in the hands of the new lessees.

Respectfully submitted,
 'J. K. Allison'
 Vice-President"

Montreal, Canada
 December 14th, 1965

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The creditors in effect own over 90% of the Hotel Company's shares and the amount of the ultimate loss turns on the price that these shares will command in the future. The financial statements of the Hotel Company for the period January 1 to September 30, 1966, prepared and accompanied by a qualified report by Price, Waterhouse & Co., show a loss for the period of \$1,333,254 to be added to a deficit at the beginning of the period of \$684,667. This loss includes "special repairs and maintenance required to bring facilities to a first-class standard" of \$379,552; note 1 to the statements states that further necessary expenditures of this nature are estimated at \$130,000. It is further noted that the audited financial statements of the hotel operating company (Messrs. Crothers & Keenan) for the year ended September 30, 1966 disclosed a loss of \$516,981, and under the terms of the lease \$500,000 of this loss was to be defrayed in terms of a subsidy from the Hotel Company.³

A recent analysis of published financial statements of the Hotel Company shows that accumulated net losses on operations as at September 30, 1967 amounted to \$3,805,452. The reported deficit, however, was \$2,741,290, reflecting the writing off of \$1,064,162 against a capital reserve arising on valuation of land.⁴ This reserve was created on June 10, 1965, or only just before the Atlantic collapse, as a result of a decision taken at a shareholders' meeting, by recording, as "directors' valuation of land", an amount of \$2,500,000, of which \$2,000,000 was attributed to the value of the land on which the hotel was built and \$500,000 to that which contained the marina, apartments and efficiency units. No independent appraisal of land values was made and the action taken would appear to have been inspired by the need to write off the sum of \$1,064,162 which was the exact amount of the loss from hotel operations from February 1, 1964 to February 28, 1965. Clearly, considerable time and careful management are required to make the hotel enterprise attractive to potential purchasers for the very large price required to liquidate Atlantic's investment, both before and after the date of receivership.

In January 1966 the first mortgage debt payable to the Grand Bahama Development Company in the amount of \$4,000,000 became due and payable and, since the loan carried an interest rate of 8%, the receiver and manager decided to repay it out of receivership funds, "rather than to enter into negotiations with potential lenders in a tight money market." It now stands in the place of the Development Company as first mortgagee. One paragraph of the report of the Montreal Trust Company, signed by Mr. J. G. Haxton, and dated August 15, 1967, may fairly be quoted in concluding this section of the narrative:⁵

"It should be clear to noteholders in the first instance that there can be no justification of any part of Atlantic's original commitment as a

³Exhibit 4914.

⁴Exhibit 4956.

⁵Exhibit 4913.

normal business risk of a sales finance company. The late President of the Company, Mr. C. Powell Morgan, in explaining to the Receiver and Manager the nature and amount of the involvement of Atlantic in the hotel company characterized his venture as a potential "big win" which would help recover some of the other losses which became apparent after the date of receivership. One loan of \$500,000 actually represented an advance to L. B. H. Management Company Limited, a company personally incorporated by Mr. Morgan which contracted to manage the hotel, the loan representing a payment of one year's rent in advance. About \$4,600,000 had been loaned to the contracting company which built the villas and marina, the second phase of the hotel complex, which were just being completed at the date of receivership. The contracting company became insolvent and was subsequently put in liquidation. Two large amounts had been loaned to companies to acquire shares of the hotel company, one amount of \$1,250,000 secured by 1,250,000 of the shares of the hotel company and another amount of \$3,750,000, ostensibly to a Berlin bank, secured by 1,250,000 shares. The bank denied any knowledge of the transaction and the Receiver and Manager had recourse only to the shares in its possession. About 550,000 additional shares were acquired in the way of seized collateral for other loans."

Concluding Reflections on Cost and Recovery

Shown overleaf is a schedule prepared by Mr. Burn entitled "Lucayan Beach Hotel and Development Limited—Analysis of Acquisition of Assets from its Inception July 1963 to September 30, 1965".¹ Every acquisition, beginning on December 5, 1963 when the Lucayan Village Company contracted with Daylite of Grand Bahama for the construction of the motel, continuing to the last transactions effective on July 22, 1965, when the receiver and manager purchased additional and minor works of Daylite of Grand Bahama and added \$400,000 to the purchase price of the marina and apartments to create an equitable settlement of the advances made by that company to the Hotel Company, is listed by date and cost. The total outlay of funds was \$14,639,258, but added to it is an amount of \$2,500,000, shown as "directors' valuation of land" and referred to in the preceding section. The money value for the acquisition of the motel and additional acquisitions afterwards was \$8,203,939, and of the marina and apartments after the adjustment in favour of Daylite of Grand Bahama, \$4,910,000. A total valuation of fixed assets arrived at after the collapse of Atlantic, and shown on the unaudited balance sheet as at September 30, 1965, is \$17,139,258, including the "directors' valuation" of the land. It has been seen that money originating with Atlantic Acceptance found its way to Grand Bahama Island in connection with the Lucayan projects in the amount of \$11,325,149 plus accrued interest in the minimum amount of \$500,000. It is

¹Exhibit 2915.

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impossible to estimate the ultimate loss to the company because, as has been noticed in Chapter IV, of the additional investment made by the receiver and manager on a very large scale, referred to by Mr. Allison in general terms in his report, and the uncertain future of the operation of the hotel and its appurtenances by new management. No doubt a great deal depends upon political developments in the Bahama Islands

LUCAYAN BEACH HOTEL AND DEVELOPMENT LIMITED

Analysis of Acquisition of Assets

From Inception July, 1963 to September 30, 1965

		Total	Hotel	Marina, Apartments & Efficiency Units	Motel
Dec. 5/63	The Lucayan Village Co. Ltd., wholly-owned by Hotel Company contracts with Daylite of Grand Bahama to build, equip and furnish a 150-room motel, convention hall, service buildings and swimming pool. Contract price: \$1,350,000	\$ 1,350,000			\$1,350,000
Jan. 18/64	Hotel Company purchases hotel from Grand Bahama Development Company for contract price of \$7,693,462	7,693,462	\$ 7,693,462		
May 26/64	Contribution to hotel assets by Daylite by way of issuing notes to Grand Bahama Development Company in consideration of release to Hotel Company	250,000	250,000		
Apr. 12/65	Daylite sells to Hotel Company, marina, apartments and efficiency units. Contract price: \$3,880,000	3,880,000		\$3,880,000	
July 22/65	April 12th agreement re-negotiated by Montreal Trust to \$4,280,000	400,000		400,000	
July 22/65	Agreement whereby Five Wheels releases Hotel Company of provision of 6 slips and payment of royalties on marina operations	600,000		600,000	
July 22/65	Purchase of additional assets from Daylite of Grand Bahama	205,000		30,000	175,000
	SUB-TOTALS	\$14,378,462	\$ 7,943,462	\$4,910,000	\$1,525,000
Additional purchases subsequent to acquisition—per records of Hotel Company					
	—floating docks, tennis court and clubhouse	34,369	34,369		
	—furniture and fixtures	114,688	114,688		
	—electrical and mechanical	89,218	89,218		
	—motor vehicles	30,552	30,552		
	—yacht	4,000	4,000		
	—sundry, to adjust	(12,031)	(12,350)		319
	TOTAL ACQUISITIONS INVOLVING OUTLAY OF FUNDS	\$14,639,258	\$ 8,203,939	\$4,910,000	\$1,525,319
	Land brought into records at "Directors' valuation"	2,500,000	2,000,000	500,000	
	Apparent error in accounting allocation	—	145,804	(145,804)	
	TOTAL FIXED ASSETS PER UNAUDITED BALANCE SHEET AS AT SEPTEMBER 30, 1965	\$17,139,258	\$10,349,743	\$5,264,196	\$1,525,319

in the future; particularly on the extent to which the report of the Commission of Inquiry in relation to gambling is implemented and the visiting tourist is assured that his indulgence in this is not contributing to the coffers of Cosa Nostra. The big and possibly only winners were the Manus brothers. It is difficult to say what they would have lost had they not been rescued by the Montreal Trust Company, since it is virtually impossible to identify any real investment that was made with their own funds. Before the collapse Allen Manus, according to Louis Chesler, said that he was the owner of 44%, or 4,400,000 shares of the issued stock of the Hotel Company, without cost to himself and had made an additional \$340,000. On the settlement with the Montreal Trust Company he and his brother received 60¢ per share for 4,332,395 shares, or \$2,820,389 in U.S. funds, for which Cecil Manus also surrendered his second mortgage debenture, and Allen Manus is reported to have even been given the yacht and six-passenger aircraft belonging to the Hotel Company and the specially commissioned furniture of his apartment. It is generally to be hoped, now that the Lucayan Beach Hotel is in the hands of honest men, that the creditors of Atlantic Acceptance will be rewarded by what must be fairly described as a courageous investment, made at a critical moment on their behalf and with their consent.

* * * *

II

Dalite Corporation (Canada) Limited

Throughout the preceding pages of this chapter frequent reference has been made to Dalite Corporation (Canada) Limited, and the company in which it held a half interest and through which it carried on its operations on Grand Bahama Island, called Daylite of Grand Bahama Limited. The activities of the latter were closely linked, as has been seen, with those of the Lucayan Beach Hotel Company, and if one sets aside the devices by which over \$4,000,000 worth of the indebtedness of Dalite Corporation to Commadore Sales Acceptance was transferred to Hugo Oppenheim und Sohn and L.B.H. Management, and looks at the reality of the situation, it will be seen that about 68% of the whole involvement of Atlantic Acceptance Corporation and its group of companies, in the sense of investment and unpaid loans at June 17, 1965, was attributable to advances made to Dalite Corporation, and passed on by it to Daylite of Grand Bahama in a manner which must be described in detail. Moreover, long before the appearance of Allen Manus on the Atlantic stage, Dalite Corporation had been a large borrower of Atlantic funds, and this particular example of the application of C. P. Morgan's theory of "secondary banking" must be studied first before the special and peculiar features of the Grand Bahama enterprise are examined.

Dalite Corporation was the creation of Eugene Last who was born in Edmonton, Alberta on May 14, 1915, according to the evidence which

he gave to the Commission in the course of two full days of testimony taken on September 26 and 27, 1966.¹ From 1920 to 1937 he lived in Rumania and had to learn English on his return to Canada in that year. During the last war he was employed by a Crown corporation in Leaside, Ontario, and afterwards, with his half-brother and brother-in-law, started a woodworking shop which developed into Dalite Furniture & Store Fixtures Company Limited, incorporated as a private company in Ontario on May 30, 1951.² Eugene Last owned all the stock and the company carried on the business of making furniture and structural panels designed by him.

For the expert evidence on the financial transaction of these companies the Commission again relied on Mr. Bertrand Wolfman of P. S. Ross & Partners whose evidence was given over a period of four days immediately prior to that of Last himself.³ Messrs. B. W. McLoughlin and H. B. Walker of Touche, Ross, Bailey & Smart, and R. W. Scott and K. A. Alles of Clarkson, Gordon & Co. testified on many matters ancillary to Dalite operations. During the early period of the company's history, which is not material to the Commission's inquiry, until the end of 1960, the directors were Eugene Last, his brother Victor Last and his half-brother John Petrie, and after April 7, 1960 the name of the company was changed by supplementary letters patent to Dalite Corporation (Canada) Limited and the board was increased in number. William R. Miller and Joseph Goldberg were elected on April 5, 1962 and Samuel J. Hogg on April 26. Miller resigned on October 15 of that year; according to the minutes, his vacancy was filled on December 6 by George H. Weinrott who, however, was not qualified to act since he never owned a share of the company, and apparently did not continue on the board although there is no record of his resignation. Joseph Goldberg resigned on June 6, 1962, so that after October 15 of that year the board of directors consisted, as before, of the two Lasts, Petrie and Hogg. There are no minutes of the company's meetings available after those of June 17, 1964 and no share records of the company have been found, but returns made to the Provincial Secretary indicate the authorized preference shares amounted to 13,800, each with a par value of \$10, of which 6,700 were issued; of these 2,600 were redeemed during 1961. Of the 12,000 authorized common shares 6,030 were issued for a total consideration of \$6,003. The most important transfer of shares in the company's history occurred on April 26, 1962, when Eugene Last, who two weeks previously had warranted that he owned all the issued shares of the company,⁴ transferred to Carl Solomon in trust 1,507

¹Evidence Volumes 64-5.

²Exhibit 388.

³Evidence Volumes 60-3, pp. 8045-544.

⁴Exhibit 2939.1.

common shares and 1,025 preference shares, which represented one-quarter of the issued capital stock,⁵ and placed the remainder in escrow for the benefit of Commodore Sales Acceptance.

Financing the Pre-fabricated Housing Venture

Last said that up until 1960 Dalite made “a lot of money”, although its profits were modest in fact, and during this time the company relied on chartered bank financing, principally from the Imperial Bank of Canada. By the end of the period Last was contemplating a large expansion of its business for the production of prefabricated components in the erection of houses which coincided with, if it was not inspired by, the activities of the Department of Northern Affairs in developing permanent housing for Eskimos. One of Last’s familiars was Joseph Goldberg who was interested in promoting the export of this product. Everything depended on developing a prototype to satisfy the standards of Central Mortgage & Housing Corporation in Canada and the Federal Housing Authority in the United States, and for this substantial funds were required. The banks were not prepared to make loans at this particular juncture, and early in 1961 Goldberg arranged an introduction for Last with C. P. Morgan whom he first met in the latter’s office at 100 Adelaide Street West in Toronto. Morgan was enthusiastic about the Dalite product and agreed to finance research and development for tests by government authorities in Canada and the United States, and the production of some experimental units for erection by the Department of Northern Affairs. At the end of Dalite’s fiscal year at July 31, 1961 Commodore Sales Acceptance loans to it were in the order of \$256,000.

By December 31, 1961 the books of Commodore Sales Acceptance showed accounts receivable from Dalite Corporation at \$346,132.94, but a considerable change was in the offing. The minutes of a meeting of the directors of the company dated February 21, 1962, under the heading, “Arrangements with Commodore Sales Acceptance Limited”, set out the new arrangement whereby Commodore Sales Acceptance became virtually the sole source of Dalite Corporation funds and the terms on which they were to be lent.¹

“Mr. Last reviewed the Company’s financial position and stated that from time to time the Company had obtained loans from Commodore Sales Acceptance Limited to provide funds for the development of the Company’s products and that, subject to the approval of the Board and of the shareholders of the Company, arrangements had been made for a further loan to enable the Company to pay off its indebtedness to the Canadian Imperial Bank of Commerce amounting to approximately

⁵Exhibit 232.

¹Exhibit 232.

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Two Hundred and Ten Thousand Dollars (\$210,000.00) and to provide working capital. He advised that the Company's indebtedness to Commodore was Three Hundred and Sixty-Nine Thousand Dollars (\$369,000.00) and proposed that it be secured by a First Floating Charge Debenture for that amount and that authority be given to obtain a loan of up to Six Hundred and Thirty-One Thousand Dollars (\$631,000.00) to be secured by a further Floating Charge Debenture ranking *pari passu* with the Three Hundred and Sixty-Nine Thousand Dollars (\$369,000.00) Debenture."

The minute goes on to record the appointment of the Bank of Montreal as the company's banker in place of the Canadian Imperial Bank of Commerce, the loan from which had been repaid, and refers in the following terms to the characteristic factoring arrangement adopted by Commodore Sales Acceptance:

"Mr. Last stated that he had arranged with the Bank of Montreal, Brown's Line and Evans Avenue Branch, to maintain an account known as the 'Dalite Transfer Account' in which all receivables would be deposited and the bank had been instructed to transfer the funds on deposit in such account to The Bank of Nova Scotia, Toronto Branch, for deposit to the Company's 'Transfer Account' maintained with that bank. He also stated that similar arrangements had been made with The Bank of Nova Scotia, Toronto Branch, to accept for deposit to the credit of the Company's 'Transfer Account' with it, funds transferred from the Company's 'Transfer Account' with the Bank of Montreal. Approval of the Board was given to the foregoing arrangements made by the President.

The Board also approved the instructions given by the President to The Bank of Nova Scotia to transfer all sums received by it for deposit in the Company's 'Transfer Account' to the account maintained with The Bank of Nova Scotia by Commodore Sales Acceptance Limited."

At the same meeting Eugene Last undertook to lend the company \$100,000 in exchange for a promissory note convertible into 5,970 common shares, at his option, for four years at 10% per annum. The money to make this advance was secured on the Dalite plant at 300 Dwight Avenue, occupied before the move to 75 Brown's Line and owned by Eugene Last, by a mortgage to a company called Hilltop Holdings Limited, an acquisition of W. L. Walton's, which in turn borrowed the money from Commodore Sales Acceptance after assigning the mortgage, and did not pay it back.

The debentures referred to are dated March 1, 1962, and in the following month Commodore Sales Acceptance tightened its hold on the situation. According to Dalite minutes of April 26, an agreement was concluded between the company and Eugene Last on the one hand, and Commodore Sales Acceptance on the other, whereby Last would

deposit 4,523 common shares and 3,075 preference shares in transferable form with the Canada Permanent Toronto General Trust Company as security against default until the two debentures were discharged. These shareholdings represented 75% of Dalite's issued capital stock and the deposit was made with the trust company, together with the resignations of Eugene and Victor Last, Samuel J. Hogg, William Miller and Joseph Goldberg, who were all the directors elected at a special shareholders' meeting on April 5, as a result of the enlargement of the board. Although the debentures subsequently went into default, Commodore Sales Acceptance took no action, and the Commission was advised by the trust company on September 15, 1966² that the shares, duly endorsed, were still held, together with the resignations, and that no notice of either payment or default in relation to the debentures had ever been received from their holder.

C. P. Morgan's 25% of Dalite Corporation

The minutes for April 26 also record, without comment or explanation, the transfer of shares mentioned above to Carl Solomon in trust. Last's recollection was that about a month prior to April 26 Morgan, in his enthusiasm about the prospects of Dalite Corporation, asked him if he could have stock in the company. As Last said, "Him being in the high finance I found him very reputable. I felt he should have part of it. He could only be of benefit to the company if nothing else. So I gave him 25% of the company". This discussion took place, according to Last, in Morgan's office, and there was a further meeting in the office of Norman O. Seagram, Q.C. of Messrs. Roberts, Archibald, Seagram & Cole, the company's solicitors, at which discussions and instructions were given to draw the debentures in favour of Commodore Sales Acceptance. Last's evidence, given in response to Mr. Shepherd's questions about Morgan's interest, was as follows:¹

"Q. And how did the question of Mr. Morgan's 25 percent interest come up again?

A. I just instructed Mr. Seagram to issue 25 per cent of the stock.

Q. Was it issued to Mr. Morgan in his own name?

A. No, it wasn't. It was issued into Carl Solomon in trust.

Q. Whose idea was it to put it in the name of somebody other than Mr. Morgan?

A. Mr. Morgan suggested it.

Q. What had the interest rate payable by Dalite to Commodore Sales been prior to this discussion about debenture and stock?

A. 15 per cent—as he put it, 1¼ per month.

²Exhibit 3069.

¹Evidence Volume 64, pp. 8555-60.

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Q. Did the interest rate payable to Commodore Sales change at this time?

A. Right after the issuance of debenture, Mr. Morgan reduced the rate of interest to 10 per cent.

Q. Then what happened to your 75 per cent interest?

A. My 75 per cent interest was deposited in escrow with Canada Permanent.

Q. For the benefit of whom?

A. For the benefit of debenture holder.

Q. Commodore Sales?

A. Right.

Q. Mr. Morgan's 25 per cent was not deposited?

A. No.

Q. Do I understand Mr. Morgan's 25 per cent was personal to him? That is, he was the owner beneficially of that 25 per cent?

A. Right.

Q. And your 75 per cent was owned by you, but it was subject—

A. To debenture.

Q. I would like to consider with you the position in which Mr. Morgan has now placed himself. Am I right in saying Mr. Morgan was president of Commodore Sales which had loaned substantial sums to Dalite (Canada) on terms whereby Commodore Sales could demand payment if they wanted to?

A. Right.

Q. If the Commodore Sales demanded payment right then and there, Dalite would have a great deal of difficulty paying it?

A. Actually that is correct. Right after the debenture was issued, they put their own man as a signing officer of cheques, a counter-signing officer, and if when the interest rate was due and we issued a cheque and they didn't want to pay or sign, we could have been bankrupt right there.

Q. Just prior to that debenture. Commodore Sales was a creditor on terms whereby Commodore Sales could demand payment and if Commodore Sales demanded payment, Dalite was going to be financially embarrassed?

A. Right.

Q. And in these circumstances, as I understand this evidence, Mr. Morgan, the president of Commodore Sales, asked you to give him an interest in the company which was determined at 25 per cent and you did give it to him?

A. Right.

Q. But he did not take that stock in his own name, he took it in the name of a nominee?

A. His attorney.

Q. And substantially contemporaneous with this, the interest rate payable to Commodore Sales dropped from 15 per cent to 10 per cent?

A. Right.

Q. Of course, you knew what it was that Mr. Morgan had done because he had to arrange it with you?

A. Yes.

Q. And he knew you knew?

A. Right.

Q. Who else knew between the time this was done and the time that Atlantic collapsed?

A. My lawyer knew, Mr. Seagram.

Q. And Mr. Solomon knew?

A. Yes.

Q. Did Mr. Hogg?

A. Mr. Hogg knew.

Q. Mr. Thomson?

A. He knew about it.

Q. They were all Dalite people?

A. Yes. All the top personnel knew about it.

Q. Can you state of your own knowledge whether Mr. Manus knew about it?

A. I couldn't say because I don't know if Mr. Morgan—it was never mentioned in front of me.

Q. In any event, you didn't tell him?

A. No.

Q. Were any other of the persons ultimately concerned with the Bahamas development aware of Mr. Morgan's interest so far as you know of your own knowledge, having told them or having heard it told?

A. I think there was a comment made by Manus once to me that Mr. Morgan had an interest, but it was never stated what percentage or anything.

Q. Did Mr. Wagman know about it?

A. Yes, I am sure he knew about it.

Q. Mr. Walton?

A. Mr. Walton knew about it.

Q. Why do you say so? Were there conversations to that effect?

A. No. They were the accountants of the company.

Q. Can you think of anyone else who was aware that Mr. Morgan was, through a nominee, an owner of Dalite?

A. Mr. Glick knew about it. He was the company accountant.

Q. Were you asked to keep this matter in confidence by Mr. Morgan?

A. No.

Q. Nothing was said about that?

A. No.

Q. But you did keep it in confidence other than to the persons you have named?

A. Yes."

The interest rate referred to remained at 10% thereafter, and it will be seen that three years later, before the Atlantic collapse, Morgan did divest himself of these shares as part of a projected final settlement of the Dalite problem, and when Dalite had been shown repeatedly and finally to be an unprofitable enterprise. However, the situation was very different in 1962, and Morgan should be heard on this subject himself. The question was raised by Mr. Shepherd in the course of making inquiries about the rôle of David Rush.²

"MR. SHEPHERD: I would like to return to the role of Mr. Manus in a moment. Just before we broke for lunch you said that Mr. David Rush appeared to believe that he would have no difficulty in extending his option on Analogue shares beyond the end of December, 1964. Did Mr. Rush ever indicate to you that he believed you would grant him some special consideration in respect to this matter or indeed in respect to any matter?

A. He did.

Q. What conversations took place?

A. Well, he indicated to me that if I did not go along with the extension that in his position in the newspaper world he could make things a little hot for me. He was at that time connected with the News Observer.

Q. What information did he claim to have which he thought would be embarrassing to you?

A. Just general knowledge of some of the weaker loans that had been made by Commodore Sales. I mean particularly the ones to Racan and also Dalite Corporation.

Q. Did he have any knowledge that you owned 25 per cent of Dalite Corporation?

²Evidence Volume 26, pp. 3470-2.

A. I didn't own 25 per cent of Dalite. It was pledged to Commodore Sales Acceptance. He may have got some information that he thought I owned 25 per cent of Dalite from that chap whose father was connected with the Bank of Nova Scotia. I cannot recall his name. It will come to me in a minute.

Q. Did Mr. Rush suggest as much, that he had such information?

A. Yes, he suggested he had certain information which would indicate that I was a principal in Dalite, which I never was.

Q. Did these representations to you by Mr. Rush take place on one occasion or on more than one?

A. They took place on several occasions.

Q. What answer did you make?

A. Well, I gave him as evasive an answer as I could. In other words, I just stalled on the situation."

The evidence contradicting the assertion that Morgan held 25% of the Dalite stock as a trustee for Commodore Sales Acceptance is overwhelming. It may be illustrated first by a document dated November 1, 1962, an original document bearing Morgan's signature in the following terms:³

"TO: Dalite Corporation (Canada) Limited,
75 Brown's Line,
Toronto 14, Ontario.

I, C. POWELL MORGAN, the beneficial owner of shares of Dalite Corporation (Canada) Limited held by Carl M. Solomon, in trust, hereby consent to the appointment of GLICK AND LEVINE as auditors of the Company to replace Walton, Wagman & Co.

DATED this 1st day of November, 1962.

'C. Powell Morgan' "

If one adds to this the reflection that nothing would have been easier than to have put all the stock of Dalite Corporation in escrow with the trust company and thus give Commodore Sales Acceptance even greater security for its loans, there can be no doubt that C. P. Morgan neither held nor intended to hold the 25% put in the name of Carl Solomon in trust for any other purpose than his own use and ultimate personal participation in the profits of the enterprise. There is no reference of any kind in any working paper of any of the accountants, nor in the files of the company, Solomon & Singer, C. P. Morgan or Commodore Sales Acceptance, to the last-named being in turn a beneficiary of Morgan's holdings. There is nothing to this effect save his own assertion, and this must be regarded as at best a rationalization of something that he felt to be discreditable, and at worst a deliberate falsehood.

³Exhibits 1952 and 2845.

Early Operations of Dalite Corporation Financed by Atlantic

From the books¹ and records of the company, the working papers of the accountants Glick & Levine and Walton, Wagman & Co., the files of its solicitors, and in particular a memorandum prepared for Annett & Co. dated June 22, 1961, containing information provided in contemplation of a public offering of shares which did not materialize, a great deal of light can be thrown on its operations. It was Last's practice to form associated rather than subsidiary companies, using the name Dalite and with shares issued to himself and his nominees. Such a one was Dalite Corporation (Manitoba) Limited, incorporated in Manitoba to purchase land for the erection of prefabricated houses in the International Nickel company town of Thompson, the shares of which were all owned, either actually or beneficially, by Eugene Last; another was Dalite Company of Delaware Limited which, under an agreement with Dalite Corporation, had a franchise for manufacturing Dalite buildings outside the United States and Canada. Daylite of Grand Bahama Company Limited was an exception, in that Dalite Corporation held a 50% interest in its common stock. Dalite Corporation's first plant was at 300 Dwight Avenue in New Toronto, on property owned by Eugene Last and rented to the company² for a term of ten years from December 1, 1955, at an annual rental of \$33,600, payable monthly in the sum of \$2,800. Until Commodore Sales Acceptance began financing Dalite, Last had forgiven the company \$1,200 per month of the rental charged, but, with Atlantic money assured, he appears to have recovered this gift and from then on collected the full amount exigible under the lease. At the end of January 1962 Dalite vacated these premises and moved to 75 Brown's Line, renting the new premises for \$4,000 per month. After the move Dalite none the less continued to pay rent for 300 Dwight Avenue and sub-let part of the premises for \$2,000 per month to Canada Motor Products (Blackstone) Limited, thus incurring a loss of \$800 per month. This was another company financed by Commodore Sales Acceptance, from which it borrowed the money to pay the rent. There is some evidence to indicate that a larger part of the building than that occupied by Canada Motor Products was used by Zeus Armature & Rewinding Company Limited, although there is no record of its rental payments in the Dalite books.

Throughout 1961 and the first half of 1962 the principal customer of Dalite Corporation was the Department of Northern Affairs for which it manufactured prefabricated housing, but the importance of the Department's purchases declined thereafter, as did the activities of Dalite's furniture and wall panel division. During the second half of 1962, and with massive support from Commodore Sales Acceptance, it began to

¹Exhibits 3076-80.

²Exhibit 2937.1.

manufacture a more elaborate prefabricated housing for the development at Thompson, Manitoba which proved to be a costly failure, and the company's final fling was taken on the island of Grand Bahama, supplying prefabricated housing to Daylite of Grand Bahama for erection as already generally described. An analysis of the revenues of the company³ for the years ended July 31, 1960, July 31, 1961 and July 31, 1962, through a five-month period ended December 31, 1962, the years ended December 31, 1963 and 1964 and an eight-month period ended August 31, 1965, which coincided with the date of the company's bankruptcy, provides a significant illustration. It shows that in 1960 Dalite was primarily a furniture company, but in 1961 out of total sales of \$1,068,678, \$400,000 was realized in housing sales, mostly to the Department of Northern Affairs. During 1962 the Department continued to buy, but it was not a large element in total sales amounting to \$1,239,287 at July 31. Then in the five months ending December 31, 1962 just under 50% of all the sales are those of prefabricated housing in Thompson, Manitoba. In 1963 the Department of Northern Affairs again became a substantial customer, and some \$240,000 in sales were made to the Grand Bahama project out of a total of \$1,709,217. In 1964 the picture changed completely, and out of total sales of \$8,678,989, \$7,544,632 were to Daylite of Grand Bahama. For the eight-month period ended August 31, 1965 sales in the amount of \$3,814,890, recorded in the books of the company consisted of duplicated and otherwise unjustifiable billings, and the Department of Northern Affairs was once again responsible for over half of the genuine sales; but over the whole six-year period, even eliminating the suspect sales, the Grand Bahama projects accounted for 49.2%, the Department of Northern Affairs contracts for 15.6% and the wall panel and furniture divisions for 17% of a total of \$15,825,282 of regularly concluded sales.

Financial Record and Atlantic Loans

Financial statements of Dalite Corporation, beginning with the year ended July 31, 1960, through to December 31, 1964 including that of the five-month period from August 1 to December 31, 1962 and the eight-month period from January 1 to August 30, 1965, provide the basis of a schedule entitled "Dalite Condensed Balance Sheets and Income Statements July 31, 1960 to August 31, 1965" (Table 47),¹ which must be considered in conjunction with another headed "Comparative Adjusted Earnings Statement—1960 to 1965" (Table 48).² The last full year of operation in which Dalite had no loans from Atlantic Acceptance was the period ended July 31, 1960. The aggregate sales were \$886,701 and the cost of sales approximately \$785,000; the

³Exhibit 3073.

¹Exhibit 3074.

²Exhibit 3075.

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net result was a \$5,000 loss after taking depreciation of \$10,000. This was typical of the progress of the company to that point and generally speaking it was able to hold its own. In 1961 the sales increased modestly to \$1,068,000; after again taking \$10,000 in depreciation the company reported a net profit of \$3,361. The first loans from Commodore Sales Acceptance were made in February 1961 and the fiscal year ended on July 31. Inventory by that date had, however, risen from \$321,000 at the beginning of the year to \$587,000 and the auditors, Glick & Levine, qualified their report in respect of merchandise inventory by saying that they had not personally examined the assets and that the inventory sheets lacked detail, but that Eugene Last had signed a certificate in respect of a figure of \$587,857.79 or more than 50% of the assets. The total outstanding loans from Commodore Sales Acceptance were then \$256,025. There was also at this time a bank loan of \$182,877 secured by an assignment of accounts receivable and inventory, so that during this period Commodore Sales Acceptance had no preferred security. It has been seen how this was corrected early in 1962 by the issue of debentures to Commodore Sales Acceptance in the aggregate amount of \$1,000,000, and the paying off of the bank loan with funds borrowed from it, but Atlantic loans soon outstripped any reasonable standard of what was appropriate or safe in terms of the published financial statements. At July 31, 1962, the end of the first full year in which Atlantic financing was available to Dalite, these loans had risen to \$786,843, which was 129.4% of total tangible assets reported and 62.4% of the total liabilities. It may be convenient to set down here an analysis of Atlantic financing of Dalite Corporation on this basis from the situation at July 31, 1960 to the date of bankruptcy:³

	<u>Tangible Assets Reported</u>	<u>Total Liabilities</u>	<u>The Atlantic Group</u>		
			<u>Loans</u>	<u>% of Total Assets</u>	<u>% of Total Liabilities</u>
July 31, 1960	\$ 593,831	\$ 406,181	—	0.0%	0.0%
July 31, 1961	1,038,800	921,696	\$ 256,025	24.6	27.8
July 31, 1962	607,783	1,260,098	786,843	129.4	62.4
December 31, 1962 ..	1,085,881(1)	2,172,091	1,621,438	149.3	74.7
December 31, 1963 ..	1,584,892(2)	2,885,311	2,237,381	141.1	77.5
December 31, 1964 ..	7,669,587	8,222,053	7,505,828	97.8	91.3
August 31, 1965	3,575,090(3)	5,352,594	4,532,352	126.8	84.6

(1) Adjusted for over-billing to Dalite (Manitoba) of \$141,500.

(2) Adjusted for \$561,000 gain on sale of Cerametal Industries' assets.

(3) Adjusted for disputed billings of \$3,815,000.

It will be noted that the figures for July 31, 1962 which produce these ratios show a decline in tangible assets from \$1,038,000 as at July 31, 1961 to \$607,783. This reduction is connected with the qualifica-

³Exhibit 3082.

tion of the report made by Glick & Levine in respect of the valuation of inventory on the statement for July 31, 1961 which produced an inquiry from W. L. Walton on behalf of C. P. Morgan.⁴ No written explanation of this was given or exists, but in the next financial statement, prepared by Walton, Wagman & Co., Dalite was reported to have suffered a loss at July 31, 1962 of \$730,000, the inventory being reduced to \$288,657 which is consistent with the position at July 31, 1960. Sales at July 31, 1961 were shown at \$1,068,678 and at July 31, 1962, \$1,239,287, whereas cost of sales had risen from \$823,401 to \$1,660,327, producing a deficit of \$421,040 expressed in gross and, after adding other expenses, a net loss of \$730,184. This increase in the cost of sales figure invites suspicion, and probably reflects adjustment of inventory arising from an overstatement by Last at July 31, 1961, about which Glick & Levine made the reservation referred to. Walton, Wagman & Co. in their turn said they were unable to express an opinion on the fairness of the financial statements at July 31, 1962, without referring to the inventory at all. In fact neither Glick & Levine nor Walton, Wagman & Co. ever expressed an unqualified opinion on the Dalite financial statements from 1960 onwards, and for the year ended July 31, 1962 Dalite had a capital deficit in the order of \$550,000. With Atlantic loans of over \$786,000 outstanding, not to mention the \$100,000 of Atlantic money advanced to Hilltop Holdings for the mortgage on 300 Dwight Avenue given by Last and lent to him by the company, Dalite was insolvent. The immediate result was that the company changed its year-end to December 31; for the five-month period ending on that day in 1962 Glick & Levine were again the auditors and as a result came into possession of the information that C. P. Morgan was the beneficial owner of 25% of the company's issued stock.

The Services of Dr. Keesing

Before leaving the accounts for the year ended July 31, 1962 reference must be made to an asset shown as prepaid sales promotion and patents in the amount of \$109,229. For the previous year the same item is shown in the amount of \$52,000, and Glick & Levine had received a letter signed for Dalite by E. Last, dated January 25, 1962¹, explaining that out of a total cost of \$53,409.57 "for travelling and promotion and publicity expenses incurred during the fiscal year ended July 31, 1961" an amount of \$52,000 was to be deferred, because the benefit of the expenditures was to be realized subsequently through sales and recovery of such expenses from another company to be formed. This company appears from examination of other records to have been Dalite Company of Delaware, and the money to have been laid out on proposed

⁴Exhibit 2923.9.

¹Exhibit 2923.2.

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ventures in Panama and Nigeria, where Last had hopes of finding a market for prefabricated housing. Another letter from Last to Glick & Levine, dated January 22, 1962, is as follows:²

"This is your authority to accept as a charge against my Advances Account in the books of Dalite Corporation (Canada) Limited the difference between the amounts advanced by Commodore Sales Acceptance Limited to Dalite Corporation (Canada) Limited as stated by them and the amounts actually deposited in the Company bank account during the fiscal year ended July 31, 1961, amounting to \$21,833.11.

In addition, this is your authority to accept as a charge against my Advances Account in the books of Dalite Corporation (Canada) Limited, the amount of \$7,000.00 which was advanced by Mr. Allen Rosen to the company in September 1960 in addition to the \$15,000.00 shown on the books of the company.

Out of the above funds I paid on behalf of Dalite during the fiscal year ended July 31, 1961 the following amounts for which this is your authority to accept as a credit to my account and as an expense to Dalite on account of Promotion Expenses:

Basic Industries Investment Corp.	\$10,000.00
Dr. John Maurice Keesing	9,000.00
U.S. exchange on above amounts at 4%	760.00
	<u>\$19,760.00"</u>

Dr. Keesing was a New York lawyer, describing himself as an expert in international law, trade and finance. He published a lengthy "curriculum vita" (*sic*) which included the information that he was the observer at the United Nations for the "Principality of Thomond." This must have appealed strongly to Eugene Last who shared with Keesing the distinction of holding an honorary degree from Philathea College in London, Ontario, an organization not officially recognized as an institution of learning, but devoted to the business of issuing academic titles for varying consideration. It may have been Keesing who appointed Last a general in the Maltese army, a title which he has used in Australia in recent months after his departure from Canadian shores. In any event, in the accountants' audit file was a bill from "International Law Consultants" in New York, addressed to Dalite, for \$5,025 "due to Dr. John M. Keesing", expressed as being owing at June 1, 1961, to which a note is attached reading: "This is for services rendered and expenses incurred in the survey and preparation of foreign markets for the Dalite aluminum housing program". This bill is initialled "E.L.", indicating approval of payment. Then there is another bill on a plain piece of paper with a typewritten heading, "Basic Industries Investment Corporation, Monrovia, Liberia", dated March 24, 1961, addressed to Dalite Corporation "for expenses advanced for your account in conjunction

²Exhibit 2923.4.

with the survey for and introduction of the Dalite prefabricated house . . . \$17,183.84.” Below that is acknowledgment of partial payments consisting of one for \$10,000, one for \$1,025 and four of \$1,000 each, making a total of \$15,025. At the bottom of this bill is some original typing which has been heavily scored out so that it cannot be read, except that the initials “E.L.” appear on it and some legible fragments including the words “to be paid” and “John M. Keesing”, followed by the words “with the”, and concluding with the word “statement.” The balance to be paid has also been scored out and the signature “E. Last” appended.³ It will be observed that after the \$10,000 said to have been paid to Basic Industries is deducted from the total repayments there is left the sum of \$5,025, which is exactly the amount paid by Dalite to Keesing, so that it appears that two bills were submitted in this respect for only one amount owing. There is a third statement in the form of a bill from Dr. John Maurice Keesing for \$9,000, addressed to Mr. E. Last, in care of Dalite Corporation, for “international trade advice services” rendered between January 1 to July 31, 1961, and this is dated January 2, 1961, which may be an error. This bill is also initialled “E.L.”⁴ As late as February 24, 1962, S. A. Glick, of Glick & Levine is found writing to Last asking for a photostatic copy of the cheque paid by him to Keesing in June 1960 for \$10,000. The work done by Keesing can hardly be taken more seriously than Keesing himself, but he continued to send out bills at intervals and subsequently claimed that Dalite owed him \$16,000. What little is known about Basic Industries Investment indicates that it was a company for the affairs of which Last assumed responsibility and which he in all likelihood created. The excess of the amounts advanced to Dalite over what was actually deposited in the company bank account from Commodore Sales Acceptance during the fiscal year ended July 31, 1961, amounting to \$21,833.11, was charged against Last’s advance account, and of this he obtained credit for \$19,760, consisting of the \$10,000 to Basic Industries Investment, \$9,000 to Keesing, and \$760 for exchange on U.S. funds at 4%. The good faith of this transaction is seriously in doubt. Generally speaking, this is the nature of the expenditure of \$52,000 set up as a deferred expense.

Glick & Levine prepared no audited financial statement for the five-month period ended December 31, 1962, but merely a draft prepared from the books of the company without an opinion.⁵ Cost of sales were one-half of what they were in the previous year, as might be expected. Sales had dropped only slightly to \$1,177,400 and there was an apparent profit of \$120,304. Accounts receivable from subsidiary or associated companies appeared in the amount of \$596,014, alleged to

³Exhibit 2923.6.

⁴Exhibit 2923.7.

⁵Exhibit 235.

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be from Dalite Corporation (Manitoba). This amount was not accurately stated and somewhat more than \$140,000 of it represented billings in excess of the estimated cost to the company, after all mortgage money had been advanced by the Bank of Nova Scotia through the Chartered Trust Company. It was never paid and remained outstanding at the date of the bankruptcy of Dalite Corporation. Payment was received in the order of some \$450,000 for which amount the Manitoba company had mortgaged the Thompson properties to Dalite, and since they were all sold shortly after the excessive billings were made, it was evidently realized that the balance billed was unjustifiable. If a reserve had been set up against the sum that Dalite (Manitoba) did not pay, and if there had been no increase of the prepaid sales promotion and patents item for deferment by some \$400,000, which is equally unjustifiable, Dalite would have lost \$423,000 during the period rather than appearing to make a profit of slightly over \$120,000; the capital position would have been deficient by \$1,086,000 rather than the \$433,870 shown in the financial statement. It should be mentioned in passing that during this period, specifically on September 21, 1962, W. R. Miller, the general manager and a director of the company, resigned from its board of directors in protest against the ownership of Dalite (Manitoba) by Eugene Last rather than by the company itself.⁶ The letters embodying Miller's resignation, addressed to both Dalite Corporation and Last separately, are both signed by the latter and his fellow directors Hogg and Victor Last as evidence of acknowledgment.

At December 31, 1962 Atlantic loans to Dalite Corporation had reached the approximate figure of \$1,620,000. The next financial statement, which was for the year ended December 31, 1964, was once again prepared by Walton, Wagman & Co. who again expressed no opinion as to its fairness. The explanation for the third change of auditors must be found in a letter dated June 11, 1963, addressed to Eugene Last as president of Dalite, sent by registered mail and indicating that a copy had been sent to C. P. Morgan. It read:⁷

"At our last meeting on June 7th, 1963, at your office, certain matters were discussed with you. We cannot agree on the methods adopted by your company.

We, therefore, hereby resign as company accountants and auditors of Dalite Corporation (Canada) Limited effective immediately and do not intend to complete the financial statements for the fiscal period ended December 31, 1962 beyond the preliminary draft statements now in your possession.

Yours very truly,

GLICK & LEVINE"

⁶Exhibit 2940.2 and 2940.3.

⁷Exhibit 2940.1.

The Trials of Cansameric Industries Limited

By this time Glick & Levine had been able to observe a transaction between Dalite and Cansameric Industries Limited for which they were also auditors. Cansameric was a construction company in which the principals were E. A. Brown and A. B. Drohan, engaged in the actual erection of the Dalite houses in Thompson, Manitoba on thirty-nine separate lots. By the autumn of 1962 it had acquired accounts receivable from Dalite in substantial amounts for which it was unable to obtain payment. The evidence of Drohan, Brown and their bookkeeper, D. M. Leiterman,¹ makes it abundantly clear that, although A. G. Woolfrey at Commodore Sales Acceptance was represented by Eugene Last as the stumbling-block to payment of its outstanding accounts, Cansameric was only able to obtain satisfaction by making two payments of its own, one on October 18, 1962 of \$6,000 and one on January 23, 1963 of \$16,-703.12, by means of cheques made payable to cash for which it received a promissory note on February 21, 1963 from Dalite Company of Delaware in the total amount of \$22,703.12. This amount was never paid by the Delaware company, and the proceeds of the two cheques were deposited in two separate bank accounts in Last's name. The funds were used personally by him and partly expended on the operations of Dalite Company of Delaware in the Republic of Panama. An examination of the books of Dalite Company of Delaware indicates that \$6,500 of this money was paid to George H. Weinrott, and at least \$5,200 remained in Last's hands, or was paid for his benefit through a cheque made payable to Lillian Casselton (alias Lillian Martin), Last's secretary, in the amount of \$5,200 drawn on one of the company's bank accounts, operated by him in his own name, with the Chase Manhattan Bank in Panama. This account was the depository for \$15,000 in U.S. funds derived from the second payment made by Cansameric, the balance of \$500 in U.S. funds having been given to Last in cash.² Cansameric, to put it bluntly, was able to make these payments to Last, ostensibly by way of loan to the Delaware company, by falsifying invoices to Dalite Corporation, as Drohan said at Last's suggestion, and its officers thus became parties to a fraud perpetrated on Commodore Sales Acceptance and Dalite Corporation which had initially been a matter of simple extortion directed against themselves. During 1962 Cansameric had also been making payments to S. J. Hogg, the vice-president of Dalite Corporation, ostensibly for engineering work on the erection of the Dalite housing. Between June 21 and September 24, 1962 these payments amounted in the aggregate to \$7,860, some \$3,000 of which was acknowledged to have been received by Hogg in the evidence which he gave before the Commission.³ As a *douceur* it also installed a new furnace in Hogg's house,

¹Evidence Volume 105.

²Exhibits 4123 and 4142.

³Exhibit 4144.

charging the expenditure to customer relations. Finally, in June 1963, Dalite and Cansameric agreed to settle the latter's claim for upwards of \$52,000 in extras, taking in exchange Dalite inventory at Thompson valued at over \$58,000.⁴ This was by way of settlement of an action brought by Cansameric against Dalite to recover the amount of its unpaid accounts, and, as part of the settlement, Brown was employed by Dalite at a salary of \$1,000 per month and Drohan was introduced as an intermediary between Pyle-National (Canada) Limited, an electrical contractor, and Dalite, to which it was supplying goods for transmission to Daylite of Grand Bahama at Lucayan Beach, securing for him commission of 10% on all the goods supplied by Pyle-National to the Grand Bahama project. This arrangement was confirmed by the evidence of the president of Pyle-National, I. Y. Morrison, and its vice-president A. J. Sherrard.⁵ The detailed accounting evidence of the Cansameric Industries transaction was given to the Commission by Mr. A. R. James,⁶ and in connection with the arrangement between Dalite Corporation and Pyle-National by Mr. H. B. Walker,⁷ both of Touche, Ross, Bailey & Smart.

D.H.I. Limited and Count Mastino Della Scala

Walton, Wagman & Co. continued to be the auditors for Dalite Corporation, and, in the case of the statement for the year ended December 31, 1963, again expressed no opinion. Sales were shown at \$1,709,217 and the net operating loss at \$14,088. The liabilities included a bank loan or overdraft of \$67,036. The loans of Commodore Sales Acceptance amounted to \$1,985,619 and of Adelaide Acceptance to \$251,762. Although sales considerably exceeded those of the previous five-month period, the results for 1963 compared unfavourably with those for the whole of 1962. An additional ingredient of the Atlantic loans was the \$100,000 mortgage given by Eugene Last to Hilltop Holdings, so that in the aggregate the amount of money on loan from the Atlantic group to Dalite was some \$2,400,000. The equity position was shown as a positive figure of \$112,921, but there was an increase of \$200,000 in the deferred expense item of prepaid sales promotion and patents, made entirely without justification, and the amount of \$566,000 shown as "investment in D.H.I.", without which there would be a deficiency of \$1,300,419 as shown on Table 48.

D.H.I. Limited was an Ontario private company, incorporated in 1956 to acquire the business of Dominion Home Improvements Company owned by Mastino Della Scala. Mr. K. A. Alles of Clarkson,

⁴Exhibit 4154.

⁵Evidence Volume 98.

⁶Evidence Volume 105.

⁷Evidence Volume 97.

Gordon & Co. examined its books and records and his testimony was given to the Commission on May 5, 1966.¹ Immediately succeeding him as a witness was Della Scala himself,² a man of mild demeanour and evidently of superior education. He was born in Rumania and came to Canada in 1953, becoming a salesman for a company manufacturing extruded aluminum windows and, after a brief experience of the business in which he became sales manager, he formed his own enterprise. He envisaged a nation-wide organization supplying windows, wall panels, tile and other domestic appurtenances such as kitchen cupboards, on the greatest scale. It was clear from his evidence that he felt that Canada was a country where hard work and enterprise would enable him to build "from the ground up", but by temperament and training he appears to have been too sanguine and too inexperienced for the highly competitive business on which he had embarked. By the end of 1961, D.H.I. Limited was indebted to Inter-Provincial Commercial Discount Corporation Limited, which was factoring its accounts receivable, in the amount of \$667,437; this company, by May 1962, had advanced an additional \$290,000 secured by debenture and its associated company, Inter-Provincial Factors Company Limited, \$60,000 similarly secured. The evidence indicates that these companies planned to acquire a share interest in D.H.I. Limited and that this plan was on the point of yielding to one which would substitute a syndicate composed of R. Scolnick, vice-president of Inter-Provincial Commercial Discount, and the familiar Trio of Messrs. Morgan, Walton and Wagman. Yet on April 18, 1962 Inter-Provincial Factors actually acquired for \$100,000 an 80% interest in D.H.I. Limited, so that the total investment of the two Inter-Provincial companies, including the debentures outstanding, then stood at \$450,000. By June Scolnick had retired from the scene and on the 27th of that month a sale was made to F. D. O'Connor, a law student in the office of Bernard Burton, solicitor for D.H.I. Limited, who purchased as trustee all of the issued common stock of D.H.I. Limited from the two Inter-Provincial companies and Della Scala by paying the sum of \$350,000 to the former and taking an assignment of the debentures referred to. According to a letter dated July 5, 1962 to C. Powell Morgan from Burton, O'Connor held his interest in trust for Morgan.³ The purchase price was paid by a cheque from Aurora Leasing Corporation to Burton for \$350,000, dated July 3,⁴ and Aurora recorded the transaction as a loan to "Bernard Burton—D.H.I. Limited note receivable." No promissory note has been discovered and Aurora never recorded any interest in the shares of D.H.I. Limited. On the day of this

¹Evidence Volume 27.

²Evidence Volumes 27-8.

³Exhibit 1929.

⁴Exhibit 1934.

payment Aurora had borrowed \$325,000 from Commodore Sales Acceptance. There is some evidence to show that Morgan told Della Scala that he proposed to transfer these shares in due course to some company the identity of which he did not disclose. The shares remained in the custody of Mr. Burton with the company's minute book, in spite of his efforts to divest himself of their custody, until a year later when Harry Wagman expressed disquiet at the lack of security for the Aurora loan. Then Burton delivered them to Wagman after being told during the interval, when he sought instructions unavailingly from Morgan, that he was making a nuisance of himself. The D.H.I. minute book was, as Burton said, still in "a state of vacuum." He subsequently got the shares back from Wagman for the purpose of making up the minute book and cancelling the shares, so that new ones could be issued in the name of Morgan's nominee. Eventually Della Scala told him that the shares were to be issued in his name and these instructions were confirmed by Morgan. Burton drew the minutes recording this issue, including one share each to J. Canning and J. C. Laidlaw as nominees of Aurora Leasing. None the less Della Scala endorsed transfer forms so that the shares were again negotiable, and on one occasion, when leaving for Europe, he gave Burton instructions that in case of his death 80% of the shares were to be transferred into the beneficial interest of C. P. Morgan. The situation remained thus until the Clarkson Company Limited took possession of the shares and the debentures, which were in the name of F. D. O'Connor and similarly endorsed, after the collapse of Atlantic Acceptance.

Purchase and Re-sale of Cerametal Industries Limited

According to Della Scala, Morgan on several occasions contemplated amalgamation of the enterprises of D.H.I. and Dalite Corporation since their operations were largely in the same field, except those connected with prefabricated housing to which Eugene Last was becoming increasingly addicted. All of these attempts, however, foundered on the intransigence of Last who had nothing in common with Della Scala except his Rumanian background. But Last was not loath to take advantage of one transaction between them, undoubtedly undertaken at Morgan's instigation and undoubtedly detrimental to D.H.I. Cerametal Industries Limited carried on business at Streetsville, Ontario and competed to a greater extent with Dalite than with D.H.I. This company was in receivership in 1963 and had attracted Della Scala's attention as a possible acquisition. According to independent valuations given to the Clarkson Company as receiver, the land and buildings at Streetsville had a market value of between \$150,000 and \$175,000 and the machinery and equipment had a "distress replacement value" of

\$65,000.¹ Della Scala was able to arrange a purchase, including assumption of the company's liabilities, for \$561,000 which Morgan agreed to for the principal creditor of D.H.I. Burton was instructed to prepare the necessary documents, but on the very day of closing was told by Morgan, in the presence of Della Scala and Wagman, that a change would have to be made if D.H.I. were to obtain Atlantic funds to complete its part of the purchase; the result was that Cerametal was sold to Dalite Corporation for \$561,000 and forthwith resold to D.H.I. at a price of \$1,147,000. D.H.I. assumed a mortgage for \$200,000, received a loan of \$361,000 from Commodore Sales Acceptance by factoring with it Cerametal's accounts receivable in that amount (subsequently restated at \$355,000), assumed federal sales tax liabilities of Cerametal in the amount of \$25,000 and issued from its treasury 55,000 preference shares to Dalite, valued at \$561,000. Thereafter the Cerametal land and buildings were given a value in the books of D.H.I. of \$411,000 and the machinery and equipment of \$350,000. All of this took place in July 1963, and its effect on D.H.I., Dalite and Commodore Sales Acceptance was effectively summarized by questions put to Mr. Alles by Mr. Shepherd as follows:²

"Q. I would like to deal now with the effect of this transaction on each of the three companies involved in them, that is to say, D.H.I., Dalite and Commodore Sales Acceptance. What was the effect on the balance sheet of D.H.I. in entering into this transaction?

A. Well, D.H.I. showed that there had been attributed to it in cash for preference shares, \$555,000, thus increasing the equity in the companies.

Q. What was the shareholders' equity position of D.H.I. at the end of the fiscal period last ended, prior to this transaction being entered into?

A. That would be at December 31st, 1962. The deficit or the deficits was \$515,000-odd, less the share capital of \$226,000, for a net negative equity of \$289,000.

Q. I take it then that if the company had not lost any money in 1963, the effect of the sale for cash of these preference shares would have been to change the shareholders' negative equity into a positive equity, if that is the right word to use?

A. Yes.

Q. Now, by the time we came to the end of 1963, what in fact happened to the shareholders' equity?

A. Well, the shareholders' equity had declined to—well, it was a negative equity of approximately \$70,000.

¹Exhibits 1949-50.

²Evidence Volume 27, pp. 3646-9.

Q. And why was that?

A. The deficit account had increased to \$847,000-odd, less the share capital, which now had increased from the previous year's \$226,000-odd to \$776,000-odd.

Q. So the effect of this transaction on D.H.I. was to put \$550,000 additional into the equity of the company, is that so?

A. That is so, yes.

Q. But since the company sustained a loss in the order of—

A. It was \$330,000 in 1963.

Q. Yes, \$330,000, the shareholders' equity was still in a negative position at the end of the year, is that correct?

A. That is correct.

Q. The equity had still been depleted?

A. Exactly.

Q. So far as Dalite is concerned, can you state what the effect on the financial statement of Dalite was of this Cerametics contraction?

A. Yes. They reported a profit of \$561,000 on the sale of fixed assets.

Q. Can you state in what manner that profit is recorded in their statement?

A. Yes. In the financial statements for the year ended December 31, 1963, a profit was recorded as a profit on the disposal of fixed assets, which was credited to the capital surplus account.

Q. So the effect of this transaction on the statement of Dalite then was to show that they had made a profit in the year of \$561,000?

A. That's correct, yes.

Q. What happened to the preference shares which were issued by D.H.I.?

A. Well, these were in fact issued upon direction of Dalite to A. G. Woolfrey in trust.

Q. And for whom was he holding them?

A. As security for the indebtedness of Dalite to Commodore Sales Acceptance.

Q. And therefore, what was the effect on the affairs of Commodore Sales Acceptance of this transaction having taken place?

A. Well, it would give the appearance of additional security being held for the loan to Dalite.

Q. Then the D.H.I. statement, I take it, would record approximately \$550,000 more of fixed assets, and the liability side of the statement would be increased by a like amount, reflecting the issue of the preference shares?

A. Yes, that is substantially correct, yes.

Q. Apart from the beneficial effect that transaction would have had upon the shareholders' equity position in D.H.I., had D.H.I. not lost money during that year, do you agree that it would appear that the transaction was beneficial to Dalite and detrimental to D.H.I.?

A. Yes, I would say so."

It will be recalled that Morgan at this time held his 25% interest in Dalite Corporation beneficially from Carl Solomon in trust and was thus enhancing the apparent value of his own equitable interest; but it is little wonder that he was in a quandary as to what to do with the 80% interest in D.H.I. Limited which was also at his disposal, and that he was restive under Bernard Burton's quite proper insistence on instructions as to what to do with the shares.

In fairness to Mastino Della Scala it should be observed that his view as to the real value of the Cerametal assets was based on a report of Dominion Appraisal Company Limited of Toronto made on December 4, 1961, prior, be it said, to the company going into receivership. This appraisal showed the replacement value of the assets at \$1,215,021 and their depreciated value as at that time was \$1,108,459. His views as to the propriety of carrying Cerametal's assets as they were carried on the books of D.H.I., and the effect of the transaction on this company, should be quoted, since they reveal the difficulty of his own situation which compelled him to turn a blind eye to the major disadvantage staring him in the face.³

"Q. Whose suggestion was it that it would be desirable to put the assets on the books of D.H.I. at substantially the figures shown on the appraisal done for Cerametal in 1965?

A. It was—in the right sequence—my desire to show a better break-up value for the assets. It was Mr. Morgan's suggestion and instructions to make the transactions via Dalite but it was subsequently our—when I say mine, mine and my staff decision or finding to break up the total purchase price according to the appraisal or book values because there was never in the direct transaction for Clarkson any specified allocation for the various assets.

Q. It was your desire or the desire of you and your subordinates at D.H.I., to purchase these assets and at whatever price you purchased them, after you brought them into the company, bring them to the books at figures which you felt could be supported from the Dominion Appraisal Company appraisal?

A. Correct.

Q. Which would have resulted in an appraisal surplus, the amount would have been added and quite properly added to the surplus of D.H.I., is that correct?

A. That's correct.

³Evidence Volume 28, pp. 3751-4.

Q. And that as such is a commonplace arrangement?

A. In fact now as you brought it up, I recall that I was searching for the appraisal because I was told by my auditors that to show it properly, one would have to show this increase as assets and as well, I was certainly—

Q. This would be shown as an appraisal surplus?

A. Yes.

Q. Mr. Morgan had a modification to that, in that it was his desire that assets be purchased by Dalite at the figure of \$561,000, and then actually sold at this higher value to D.H.I., because in his view, it would as indeed it did, improve the profit and loss statement of Dalite.

A. Correct.

Q. You would agree that this method of dealing with the purchase of these assets was beneficial to Dalite and detrimental to D.H.I., wasn't it?

A. With your permission, and with all due respect, I agree that they were beneficial to Dalite, but I do not see in principle that they were to D.H.I., detrimental to D.H.I. I fully agree that in the long run, the shareholders of D.H.I. could possibly—let's say would not benefit by it or something of this nature, but I do not see any drawback for D.H.I. in this transaction at that time. In other words, I was not opposed to it.

Q. No, but you were not, were you, Mr. Della Scala, in a position to oppose, I suppose?

A. No.

Q. I suppose Mr. Morgan had the money, you in the company would have to do as he saw fit?

A. There is no question on the fact that if I thought I should have opposed it, I wouldn't have done anything in a very determined way because I had to borrow money, \$350,000 or \$360,000 against receivables.

Q. Let's break it down into its constituent elements, then I will leave the point.

A. Yes.

Q. First, I understand that it was then your opinion, indeed it remains your opinion that it was to the benefit of D.H.I. to purchase the Cera-metal assets, is that correct?

A. Very much so.

Q. It was then, and remains your opinion that it would be advantageous to D.H.I., having purchased them, to cause to be shown upon the balance sheet of D.H.I., properly identified as an asset, the excess of what you believed the actual value of these assets to be over what you had to pay for them?

A. Correct.

Q. And that remains your opinion?

A. Yes, correct.

Q. But D.H.I. originally had the right to purchase the assets at \$561,000, and to accomplish the other two objects very easily had it purchased them at the sum it was required to purchase them of \$1,147,000. My question was directed really to that aspect of the transaction. Do you not agree that that was clearly detrimental?

A. Yes.

Q. Detrimental to D.H.I.?

A. That aspect, yes."

D.H.I. Limited a Heavy Drain on Atlantic Funds

The relationship between Della Scala and Morgan was a curious one. Compared to most of the people that Morgan was dealing with Della Scala was not notably deficient in business judgment and was withal an honest man. They were involved together in another transaction which resulted in heavy potential loss for Atlantic Acceptance—the financing of Conarm Developments Limited—and which will be referred to hereafter.¹ Morgan was obviously held in high regard by Della Scala and was in the unusual position of being able to rely on Della Scala's good faith, to which the instructions of the latter to Burton about the disposition of the 80% interest in the shares of D.H.I. in the case of his death bear witness. The combination was, however, disastrous for D.H.I. and for Atlantic. Prior to Morgan buying out the Inter-Provincial group, Commodore Sales Acceptance had a very small commitment in the shape of a loan against inventory of \$30,000 which was adequately secured. In the nine-month period ended December 31, 1961, and before depreciation, D.H.I. lost \$7,124, but at the end of 1962 the loss amounted to \$387,424 on the same basis and on sales which, after adjustment for the disparity between the two periods, were comparable. By the end of 1963 the net loss before depreciation was \$330,950. In 1964 the company's operations were catastrophic because the net loss before depreciation was \$1,563,559; the pace of loss accelerated in 1965 and in the nine-month period ended September 30 was \$1,319,290. The deficit position of the company as a result was, at December 31, 1961, \$128,709 and at December 31, 1962, after Morgan had taken it over, \$515,716; at December 31, 1963 it was \$847,365, at December 31, 1964 \$2,418,643, and at September 30, 1965, \$3,757,933.² None the less, during and after 1962, D.H.I. obtained the money it required to operate from Commodore Sales Acceptance, generally against the security of

¹Chapter XV.

²Exhibits 1942-3.

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factored accounts receivable and inventory. A comparison of the company's losses before depreciation with the increase in the loans from Commodore Sales Acceptance is as follows:³

	<u>Losses</u>	<u>Increase in loans</u>
Year ended December 31, 1962	\$ 387,424	\$ 688,096
Year ended December 31, 1963	330,950	1,572,874
Year ended December 31, 1964	1,563,559	1,672,384
Nine months ended September 30, 1965 ..	1,319,290	478,545
Total	<u>\$3,601,223</u>	<u>\$4,411,899</u>

At the final date the book value of all the security, consisting of accounts receivable and inventory, which was held by Commodore Sales Acceptance was \$2,105,626, or slightly less than half of the money lent. It is clear that by this time Commodore Sales Acceptance was lending to make good the losses of the company and to provide it with working capital. In addition, loans were being made against progress invoices sent to customers before completion of orders, and setting out the amount that was deemed to be receivable on the basis of the work done. The company's auditors at the end of each year deducted the amount stated by these progress invoices and did not allow them as accounts receivable; the loans thus got well ahead of the assigned receivables. A particularly glaring example is provided by the financial statements of December 31, 1964, prepared without an opinion being expressed by McLeod, Dickson & Co., showing the profit and loss calculated by the divisions into which the company's operations were organized.⁴ The kitchen division had gross sales of \$848,811 on which the net loss was \$805,639; the window division had gross sales of approximately \$1,801,000 for a net loss of approximately \$601,000; and in calculating these losses no allowance had been taken for depreciation. The explanation provided by Della Scala was that the contractors to whom the sales were made had supplied faulty specifications.

In the upshot, at June 17, 1965 D.H.I. owed Commodore Sales Acceptance \$4,503,396.29 and Aurora Leasing Corporation \$727,773, and Mastino Developments Limited, a holding company of Della Scala's, an additional \$163,469 to Aurora Leasing, the whole debt being in the order of \$5,400,000. This staggering sum might be expected to justify the devotion of a whole chapter of this report to a minute examination of the affairs of D.H.I. Limited and of Mastino Della Scala himself. But this brief account has been incorporated in the general treatment of the affairs of Dalite Corporation, because the only really questionable transaction in its history, from the standpoint of its own management, was the

³Exhibit 1945.

⁴Exhibit 137.

one in which it allowed Dalite to become interposed between it and the acquisition of the assets of Cerametal Industries. For the rest, it provides an example of a reckless extension of credit to a company which was obviously insolvent, and the throwing of good money after bad by C. P. Morgan which, as evidence before the Commission has abundantly illustrated, was his most serious weakness as a business man apart altogether from the fraudulent transactions in which he engaged. A great deal of the loss incurred by Atlantic Acceptance in its dealings with Della Scala was due to the genuine liking which existed between him and Morgan, and which induced the latter to finance his enterprises on the mere assurance that they could be made profitable in due time. In the second volume of the "Review of Loans", prepared for the receiver and manager of Atlantic Acceptance by the Clarkson Company Limited and lodged with its report in the Supreme Court of Ontario,⁵ may be found a wry comment on D.H.I.: "The company really has existed because of the very strong personality of its president who seems to spend the majority of his time convincing creditors and customers that they should do the things that their own good business sense tells them they should not do." Obviously Della Scala's persuasive sincerity has won him some of the advantages of a charmed life, because instead of suffering the bankruptcy which, from the magnitude of its losses and the size of its indebtedness to Commodore Sales Acceptance, might have seemed inevitable, D.H.I. was still in operation under a loose and informal receivership arrangement at the end of 1966. Part of the reason for this, and perhaps most of it may be found in a concluding paragraph of the Clarkson review which reads:

"While it might appear that we have been more lenient with Mr. Della Scala than necessary, it should be understood that providing we are able to protect our security during any extension period the possibility of obtaining \$1,500,000 or for that matter \$1,000,000 from a going concern purchaser is far better than the recovery in a forced liquidation which would be a maximum of \$800,000 and probably more like \$500,000 to \$600,000."

And doubtless the amiable qualities of Mr. Della Scala have also played their part.

Final Figures for Dalite Corporation—1964 and 1965

The last financial statement of Dalite Corporation prepared by Walton, Wagman & Co., again without opinion, was for the year ended December 31, 1964. In this period the company's sales were alleged to have risen to something in the order of five times what they were in the previous year, or to a figure of \$8,679,000. The gross profit reported was approximately \$1,355,000 and the net profit \$37,115. The accounts

⁵Exhibit 5124.

receivable had risen from \$323,237 to the remarkable sum of \$7,003,043, mostly owing by Daylite of Grand Bahama. Had this company been able to pay Dalite this very large amount and had there been no further construction costs incurred in connection with building projects on Grand Bahama Island for which bills had been sent out, the net profit of \$37,115 could have been achieved after writing off the prepaid sales promotion and patents item, which indeed was done according to the statement. In point of fact substantial additional construction costs were incurred early in 1965 to complete the Grand Bahama projects, and the invoices to Daylite of Grand Bahama were suspect, as has already been said, to an extent which detailed examination will reveal. No contracts between the two companies have ever been found and must be considered as non-existent. In most cases Daylite of Grand Bahama was selling the completed projects to the Lucayan Beach Hotel and Development company and if the prices of sales to this company are compared with the original billings from Dalite Corporation it is apparent that over-billing by the latter was substantial. In the absence of any contract Dalite could send an invoice for any amount it cared to, and in fact Daylite of Grand Bahama sold the completed projects for substantially less money than the sum of the invoices presented to it. Daylite of Grand Bahama had no money, and in consequence was unable to pay any more than the particular asset had been sold for; in short the solvency of Dalite depended entirely on the ability of Daylite of Grand Bahama to pay the amount which the former had chosen to bill it.

One financial statement was prepared by accountants after December 31, 1964, the statement of August 31, 1965, constructed substantially by Mr. Wolfman from the books of the company and figures supplied by the trustee. These, as shown on Table 47 in relation to the eight-month period ended on that date, have been adjusted to delete substantial billings made by Dalite Corporation to Daylite of Grand Bahama as already noted, since these were either duplications or disputed and there was no evidence to support them. In the main they were made on or about June 30, 1965, or very shortly after the collapse of Atlantic Acceptance. After adjustment, sales for this period were \$1,065,000, direct cost of sales \$1,834,443 and the net operating loss \$1,225,038. Reference to Table 48 shows impairment of the shareholders' equity in the amount of \$2,390,218. Interest had accrued against the company during this final period in the amount of \$403,381 and accounts receivable declined by about \$3,500,000, there being some \$3,416,060 receivable in the main from Daylite of Grand Bahama. At the time of the Atlantic collapse Dalite owed the Atlantic group approximately \$4,650,000, but the reduction of this indebtedness from \$7,500,000 as at December 31, 1964 had been effected, as will be recalled, by the sale of treasury shares of Lucayan Beach Hotel and Development Limited to Hugo Oppenheim

und Sohn and by the rental of the hotel to L.B.H. Management, to enable the Hotel Company to pay something more than \$4,000,000 to Daylite of Grand Bahama. The reduction in consequence of the Dalite loan to Commodore Sales Acceptance was merely a transfer of indebtedness, and the money lent by the latter went round in a circle accompanied by the familiar flurry of book-keeping entries.

George H. Weinrott as Financial Adviser

Before considering the final period of expansion of Dalite Corporation, backed by unlimited supplies of Atlantic money, and the fatal involvement in the Grand Bahama venture which left it prostrate after the Atlantic collapse and eventually bankrupt in status as well as in fact, it is instructive to turn to the part played by George Harold Weinrott, first and briefly in the affairs of the company, and subsequently as the impresario of Cimcony of Canada Limited, a company which absorbed nearly \$2,000,000 of Atlantic money of which very little can conceivably be recovered. Weinrott's name has appeared before from time to time in this report, and his peculiar mixture of energy and incompetence make him a protagonist of the Atlantic tragedy. Eugene Last met him for the first time in New York in 1962 on the introduction of his friend Joseph Goldberg, and Weinrott undertook to help Last with Dalite's plan to sell prefabricated housing in Panama. There is no doubt that Last, in spite of much practical experience and shrewd contriving, had a good deal of the *folie de grandeur* which was noticeable in Weinrott, and indeed in C. P. Morgan. Last brought Weinrott to Morgan's office in Toronto, and believed that Morgan had met him before, because he put his arm around Weinrott's shoulders and conducted him into the inner sanctum, leaving Last for the moment to his own devices. There is no evidence that this was the case before the Commission, but Morgan may well have heard of Weinrott as a dealer in mortgages and expounder of what he called the "Cimcony concept", which envisaged a world-wide group of companies financing housing projects through mortgages of real estate and selling the mortgages to long-term investors at a profit. Moreover Weinrott had, as has been seen, an associate of some notoriety at least in the person of Carrol M. Shanks, formerly president of the Prudential Assurance Company of America, who had resigned from that position under pressure as a result of a well-publicized conflict of his own interest with that of his company. Dalite was already in difficulty at Thompson, Manitoba with the costs of the erection of the houses there, and Last testified that Morgan suggested the appointment of Weinrott as a director of Dalite Corporation (Manitoba) Limited to supervise the mortgaging of its Thompson properties. Funds for this purpose were provided under the National Housing Administration plan by the Bank of Nova Scotia, through the intervention of a Last associate and Dalite employee, Brian

Sparks, whose father was a "business developer" employed by the bank in Toronto. Ultimately Morgan induced Last to accept Weinrott as "financial vice-president" of Dalite Corporation and it was at least planned to have Weinrott made a signing officer of the company. Weinrott was indeed made a director on December 6, 1962 and the minutes of its directors' meetings¹ do not record his disqualification until June 17, 1964. In any event he paid his first visit to Thompson towards the end of 1962, and to this event Eugene Last was disposed to attribute all the difficulties which Dalite subsequently had to contend with in that part of the country. The connection was brief and was severed as a result of Last's discovery that, during his own absence from Toronto, Weinrott had issued a Dalite cheque, signed by himself and Lillian Martin, dated January 9, 1963 and made payable to Weinrott in the amount of \$15,000. The particulars originally written on the cheque, as it was introduced into evidence,² had been heavily scored out in pencil and typed above them were the words "expenses research and investigation for Dalite Corporation (Canada) Limited". According to Last, under this had originally been typed "commission on arranging mortgages for Thompson, Manitoba", but examination by the Centre for Forensic Sciences established the erased words as "Salary and commissions to 12/31/62". Last testified that Weinrott obtained the cheque from one Robert Stoller who was working in the Dalite office in the interest of Commodore Sales Acceptance, and that between the time when he first observed it in its cancelled state and complained to Morgan about it, and then returned to secure it for inspection by the latter, this alteration had been made. Morgan said he would look into the matter, but Last derived no satisfaction from this, and dismissed Weinrott from his position in Dalite on the grounds that he had no right to a commission on mortgages arranged by Brian Sparks. This was clearly the case, and it is also clear that Weinrott, or somebody in his interest, recognized the fact and saw fit to alter the particulars on the cheque. It was, however, highly characteristic of Weinrott whose principal activity throughout his connection with Morgan seems to have been paying fees to himself, or to companies which he wholly owned, in large amounts for services which mainly consisted of unprofitable employment and downright waste of large sums of Atlantic money. Sparks, who was examined under the Securities Act by Mr. Cartwright on August 19, 1966,³ testified that he eventually recovered \$5,000 of the fees paid in relation to the mortgages at Thompson from Weinrott later in 1963, and, in accordance with an undertaking given in writing by Sparks on April 10, 1962, he was bound to divide any such fees with Joseph Goldberg who had apparently introduced him to the Dalite situation at that time. Sparks held the

¹Exhibit 232.

²Exhibit 3207.

³Exhibit 4201.

position of “vice-president marketing” at Dalite until November 1963, and promoted an abortive transaction in Mexico, in the course of which a model prefabricated house was erected in that country at a total loss to the company of the money expended.

The Incorporation of Cimcony of Canada Limited

It is difficult now, in view of the many afterthoughts which have been expressed before the Commission in evidence, to appreciate the true nature of the breach between Weinrott and Last, since, as will be seen, their affairs continued to be linked in a number of enterprises. The original understanding between them undoubtedly contemplated Weinrott receiving an interest in Dalite Corporation and perhaps exercising some measure of control, at least during the period of the financing for which he offered to make himself responsible. But, although Weinrott was always willing to abet the efforts of others as long as they offered an opportunity of making a personal profit, he was seldom able to perform in accordance with his undertakings, and Last was to realize this earlier than Morgan. In any event Weinrott, having surveyed the scene at Thompson, was not disposed to abandon the field, and on April 19, 1963 Cimcony of Canada Limited was incorporated on his instructions given to Senator David A. Croll of the Toronto law firm of Croll, Borins & Shiff, with an authorized capital of 10,000 shares at a par value of \$10 per share. M. A. Goldberg of that firm, who was immediately responsible for the incorporation, testified at length before the Commission on May 9, 1966.¹ Three shares were originally issued, one to Weinrott, and one to Goldberg and to a stenographer in the office, both of whom were nominees for Weinrott. There were a number of appointments to various offices which largely reflect changes of mind on Weinrott's part, but the most significant and enduring of these was that of Harry Wagman as treasurer on May 9, 1963. For a brief period the president-designate was one Thomas Stevens who had been persuaded by Eugene Last to leave his employment by Central Mortgage & Housing Corporation and entered the service of the new company at the invitation of C. P. Morgan. Stevens was to be paid a salary of \$10,000 per year and was to direct the mortgage brokerage activities of Cimcony of Canada, but his efforts to establish his own position and to introduce some sense and order into the activities of Weinrott led to a falling out with the latter and his dismissal in June, tamely acquiesced in by Morgan. Stevens' evidence before the Commission² is of interest only because it reveals what a difficult person Weinrott was to work with and how in the end he prevailed over the men who held the purse-strings. Having set up the company he was loath to work with anybody in it, and spent most of his time travelling between

¹Evidence Volume 29.

²Evidence Volume 30.

New York, Thompson and Toronto, and in Toronto more time in the offices of his solicitors than in that of his company. A young man by the name of Marvin Rotman, a "mortgage trainee" hired by Weinrott without reference to Stevens, gave a vivid picture of Weinrott's activities.³ He was by then a man in the early seventies who started his business day at six o'clock in the morning, talked furiously on the telephone for hours to points all over North America and retired early after dining. Both Stevens and Rotman were advised to leave their positions by Harry Wagman who appears to have formed an accurate opinion about the effectiveness and propriety of Weinrott's methods. Morgan, however, remained a supporter until the end, obviously with misgivings but always in the hope that Weinrott's large promises about selling many millions of dollars worth of Atlantic Acceptance notes, and his claims to be able to tap unlimited resources, might some day be realized.

Weinrott assumed the presidency of Cimcony of Canada on June 28, 1963. The only infusion of capital into the company came from Valley Farm and Enterprises Limited in the amount of \$100,000 and, in accordance with a letter of May 1, 1963,⁴ this was to be a subscription for the ordinary shares of the company. By this letter, the terms of which were accepted by Weinrott, he was given an option, open till April 30, 1966, either to purchase 50% of the stock held by Valley Farm, after making allowance for a return of 10% upon its investment, or to take 50% of the net profit before tax made by the company, subject to the same provisions. The shares involved were 9,997 of the 10,000 authorized shares, representing all except the directors' qualifying shares for which no money was ever paid to the company. It would be tedious to follow the many changes of mind by Weinrott as to the ownership of these shares in detail; suffice it to say that it was planned at one point to have the shareholders of Cimcony Limited, the Bahamian Company incorporated in September 1963, namely Weinrott, Shanks, Riley and Mortgage Trust & Savings Corporation (Bahamas) Limited, owned by Morgan, hold them in the same proportions as in Cimcony Limited, and to issue \$100,000 worth of preference shares of Cimcony of Canada, authorized by supplementary letters patent, to Valley Farm and Enterprises. M. A. Goldberg, however, never received any reply to correspondence addressed to Valley Farm and Enterprises or to David M. Samuel, and Weinrott expressed the view that Harry Wagman was the cause of this company failing to honour its agreement. In the end the 9,997 common shares, after a brief sojourn in Nassau, remained in Goldberg's hands and were turned over to the trustee in bankruptcy. It is probable that the real reason for keeping this whole matter in suspense was that the company's licence as a mortgage broker would have been imperilled had its shares been in

³Evidence Volume 30.

⁴Exhibit 2000.

alien hands, as indicated by a letter of July 16, 1963 from Croll, Borins & Shiff to the Ontario Department of Insurance,⁵ assuring it that “all of the outstanding unissued shares of the company are beneficially owned by Valley Farm and Enterprises Limited which is a company incorporated under the laws of the Province of Ontario.”

Briardale Investments Limited and Ticonderoga Investments Limited

Weinrott, impressed with the prospects of Thompson, decided to build a motel there for the construction of which a company called Briardale Investments Limited was incorporated, and an apartment house to be built by a companion company by the name of Ticonderoga Investments Limited. Both of these companies were evidently owned by Weinrott, and not by Cimcony of Canada as was occasionally stated in evidence given to the Commission. The Briardale motel was carelessly located on lands which were zoned strictly for residential purposes, and in consequence had to be completed in the form of a residential club. The Ticonderoga apartment building was never in fact completed by Weinrott's company. Weinrott, who described himself as a “housing consultant”, was the principal in an Ohio corporation entitled Housing by Cimcony Inc., organized to develop a prefabricated house made of a special chemical plastic compound, described by him as “polyurethane”, to replace more conventional building materials and developed by his associate Thomas F. Riley. This company provided a prototype house which was erected at Thompson. The two principal buildings referred to, according to Donald B. Sommerville, a professional engineer who valued these assets for the trustee in bankruptcy of Cimcony of Canada, were of cheap and conventional construction without even the deep concrete foundations provided for the Dalite houses erected by Cansameric Industries. The only novel feature, which was no novelty in the north of Manitoba, was the use of timber piling to anchor the buildings below the line of permanent frost.¹ The actual builder of these structures was a man called DeJonckheere, a special favourite of Weinrott who had caused trouble for Dalite, and the whole operation was conducted with money advanced by Commodore Sales Acceptance through Cimcony of Canada to Briardale and Ticonderoga on the most lavish scale, with a full measure of Weinrott's driving self-confidence. Rotman described his casual selection of suppliers of materials to be shipped to the building site from Toronto by thumbing through the yellow pages of the telephone book, without asking the advice of anybody knowledgeable in the trade. It was not until the end of October 1964 that Weinrott abandoned the stricken field at Thompson to concentrate on fairer prospects in the Bahama Islands.

⁵Exhibit 2003.

¹Evidence Volume 30 and Exhibit 2050.

Source and Disposition of Funds for the Weinrott Companies

The flow of very considerable funds from Atlantic Acceptance into these projects was examined by Mr. R. W. Scott of Clarkson, Gordon & Co., who testified before the Commission on the subject on May 9 and 10, 1966.¹ In addition to the affairs of Cimcony of Canada, Ticonderoga Investments and Briardale Investments, also considered were those of Housing by Cimcony Inc. so far as he was able, and of another American corporation known as F.F.C. Construction Corporation Inc., a wholly-owned subsidiary of Cimcony of Canada organized to develop an urban renewal project in Buffalo, New York. The activities of this company included the erection of one of the prototype houses produced by Housing by Cimcony in Columbus, Ohio, but got no further than that because its proposal was rejected by the authorities in Buffalo. All of the cost of this venture was also borne by Commodore Sales Acceptance through advances to Cimcony of Canada.

Mr. Scott's analysis of the source and disposition of funds for the three companies, Cimcony of Canada, Briardale Investments and Ticonderoga Investments, during the period May 10, 1963 to September 30, 1965, is as shown opposite.²

The first advance by Commodore Sales Acceptance to Cimcony of Canada was made on August 19, 1963, by a cheque in the amount of \$100,000. By the end of October 1964, at the time of George H. Weinrott's withdrawal from management of the company's affairs, they had reached a total of \$1,474,028.93. As might be expected, they continued until the eve of the Atlantic collapse, but, no doubt for greater security, were paid to an account in the name of S. S. Chusid in trust. Chusid was an associate in the office of Wagman, Fruitman & Lando, and these payments amounted to an additional \$187,500. Letters of credit on behalf of the three companies, paid by Commodore Sales Acceptance on November 18, 1963 and July 16, 1964, amounted to \$142,837.27 and additional amounts paid by cheque to other parties, and charged to the account of Cimcony of Canada, were in the aggregate \$14,505.34. Against a total of \$1,818,871.54 advanced, repayments were made between December 1963 and June 1965, mostly from the account of S. S. Chusid in trust, for a total of \$91,142.90 of which \$72,907.78 was interest. However, interest in the amount of \$94,871.74 was capitalized by Commodore Sales Acceptance and a further \$52,116.08 was receivable at June 30, 1965, so that the total amount receivable on the books of Commodore Sales Acceptance at that date was \$1,947,624.24.³

¹Evidence Volumes 29-30.

²Exhibit 2016.

³Exhibits 2017-8.

**CIMCONY OF CANADA LIMITED, BRIARDALE INVESTMENTS
LIMITED AND TICONDEROGA INVESTMENTS LIMITED**

Source and Disposition of Funds from May 10, 1963 to September 30, 1965

	<i>Cimcony of Canada Limited</i>	<i>Briardale Investments Limited</i>	<i>Ticonderoga Investments Limited</i>
<i>Sources of funds</i>			
Commodore Sales Acceptance Limited	\$ 1,727,728.64		
Valley Farm and Enterprises Limited	100,000.00		
Rental revenues and miscellaneous receipts	37,729.55		
Ticonderoga Investments Limited		\$ 2,860.00	
Cimcony of Canada Limited		545,931.06	\$ 555,861.00
Totals	<u>\$ 1,865,458.19</u>	<u>\$ 548,791.06</u>	<u>\$ 555,861.00</u>
<i>Disposition of funds</i>			
Briardale Investments Limited	\$ 545,931.06		
Ticonderoga Investments Limited	555,861.00		\$ 2,860.00
Commodore Sales Acceptance Limited		\$ 24,219.21	
Housing by Cimcony Inc.	146,648.78	18,125.87	41,339.84
George H. Weinrott & Company Inc.	47,001.85	7,480.00	3,740.00
Dalite Corporation (Canada) Limited	9,854.83	203,943.21	92,274.75
Total of other amounts paid for building costs and expenses	553,867.41	294,929.00	415,631.97
	<u>\$ 1,859,164.93</u>	<u>\$ 548,697.29</u>	<u>\$ 555,846.56</u>
Bank balances, September 30, 1965	<u>\$ 6,293.26</u>	<u>\$ 93.77</u>	<u>\$ 14.44</u>
<i>Sources</i>			
Commodore Sales Acceptance Limited			\$ 1,703,509.43
Valley Farm and Enterprises Limited			100,000.00
Rental revenues and miscellaneous receipts			37,729.55
			<u>\$ 1,841,238.98</u>
<i>Disposition</i>			
George H. Weinrott & Company Inc.		\$ 58,221.85	
Housing by Cimcony Inc.		206,114.49	
Dalite Corporation (Canada) Limited		306,072.79	
Total of other amounts paid for building costs and expenses		1,264,428.38	1,834,837.51
Total of bank balances, September 30, 1965			<u>\$ 6,401.47</u>

Cimcony of Canada Buys an Atlantic Note

To the total of Atlantic funds involved must be added the \$100,000 supplied by Valley Farm and Enterprises which was advanced on May 10, 1963, and of which \$82,650 was paid back by Cimcony of Canada only four days later to buy 17,000 common shares of Commodore Business Machines. Thomas Stevens' explanation for this was that, after returning from Thompson with Weinrott, who during their stay had told him that he was taking over Dalite Corporation from Eugene Last, he had reported to C. P. Morgan, at Wagman's suggestion, that Weinrott's expenses were rapidly eating up funds of Cimcony of Canada. Morgan had told him that he would soon take care of that, and the substitution of the 17,000 shares of stock for \$82,450 of the \$100,000 advance was the result. However that may be, by August 15 Weinrott had induced Valley Farm and Enterprises to repurchase the shares at the price of sale.¹ The amount of this advance was always treated as a loan on the books of Valley Farm and Enterprises bearing interest at 10%, and from the records available it would appear that nothing was paid on either principal or interest. Although Cimcony of Canada made no profit on this, a later transaction in which a little income was made must be referred to in this context. On May 28, 1964 Aurora Leasing Corporation borrowed \$2,000,000 from Commodore Sales Acceptance and advanced \$2,000,000 to the company² which paid it to Atlantic Acceptance Corporation for the purchase of a junior subordinated short-term note. Atlantic Acceptance repaid the \$2,000,000, together with interest, in four payments on July 22, September 4 (there being two payments on this date) and September 29 of the same year, and Cimcony of Canada on the same dates repaid Aurora Leasing with interest, making \$1,340.21 on this aspect of the transaction.³ Atlantic Acceptance, of course, supplied all the money for this purchase and sale, and the effect on its ability to extend its borrowing under the provisions of the various trust indentures supplies the explanation, if not justification, for an apparently trivial arrangement. Further evidence of its background and significance was given by Mr. Wolfman to the Commission.⁴ The note was not issued under the provisions of any trust indenture, nor was there any authorization for its issue by the directors of Atlantic Acceptance; but on July 9, 1964 an indenture to secure junior subordinated notes was approved by the board, and the president advised it that negotiations to sell such notes to the Connecticut General Life Insurance Company had just then been completed. On July 17 Atlantic duly sold a \$2,000,000 junior subordinated note for \$2,000,000 to that company, and with the proceeds redeemed the one held by Cimcony of Canada, which repaid Aurora

¹Exhibits 1600.1 and 1600.2.

²Exhibit 929.

³Exhibit 2021.

⁴Evidence Volume 69.

Leasing \$920,000 of the \$2,000,000 borrowed and re-invested the balance of \$1,080,000, or \$1,000,000 in U.S. funds, in one of the new junior subordinated notes, No. J.S.S.T.N-2.⁵ Cimcony of Canada continued to hold junior subordinated notes, to an extent diminished by the sale of part of its holdings to others, until October 1, 1964 when it ceased to be a noteholder.

As will be seen by reference to Chapter X⁶ and to Chapter XVI for a fuller discussion, by issuing a \$2,000,000 subordinated note, paid for with its own money and included in the calculation of its subordinated debt reported to the noteholders in the supplementary information supplied to them on June 30, 1964, Atlantic was in a position to sell an additional \$7,000,000 worth of senior notes under the existing trust indenture, compliance with which always taxed Morgan's ingenuity to the utmost. On September 1, 1964, an invoice for "professional financial advisory services"⁷ was sent to Atlantic by Cimcony Limited, Weinrott's Bahamian company, in the amount of \$31,250, which was paid by cheque dated December 1.⁸ In the previous May, according to Weinrott's notes,⁹ an arrangement had been made between Morgan and himself to employ Cimcony Limited as fiscal agent for Atlantic. The fee paid must therefore include remuneration for the signal services rendered by Cimcony of Canada on this occasion, because the only other services in 1964 were of the most perfunctory kind. Carrol M. Shanks was asked about the fee paid to Cimcony Limited in the course of his examination in New York¹⁰ and, according to his recollection, he made two telephone calls to officials of Connecticut General Life Insurance Company and Mutual Benefit Life Insurance Company to secure appointments for C. P. Morgan who did all the negotiating himself. In fact the established fiscal agent for Atlantic Acceptance in the United States was Kuhn, Loeb & Co. of New York, and Atlantic also paid the usual commission to it for the sale of the notes in question.

Weinrott and the Thompson Mortgages

Harry Wagman's attempts to control Weinrott's expenditures as a signing officer of Cimcony of Canada were in large measure frustrated by the latter opening an account in his own name in trust in Thompson, Manitoba, from which he paid out some \$330,000 of Cimcony of Canada money. There were practical reasons for having a local bank account in Thompson, but one might have expected it to be in the names of Cimcony of Canada, Ticonderoga Investments or Briardale Investments, or all of them. Ticonderoga and Briardale between them paid Dalite

⁵Exhibit 3316.

⁶pp. 688-9.

⁷Exhibit 3315.

⁸Exhibit 3317.

⁹Exhibit 1976.

¹⁰Exhibit 3802.

Corporation \$306,072.79 for building materials left over, or unused, from its prefabricated housing project which Stevens said were worth \$5,000 and Weinrott described as junk. Nevertheless these payments were essential if the full tale of Dalite losses on the Thompson project was to be glossed over and gave Weinrott an additional claim on Morgan's regard. Although on the books of Dalite these transactions were properly treated as a sale, on those of Ticonderoga and Briardale they were shown as mortgages received from Dalite, and the only reasonable conclusion one can come to is that Wagman, who was doing all the accounting for the companies involved, was instructed to appease Weinrott in this manner. In spite of the fact that Cimcony of Canada, Briardale Investments and Ticonderoga Investments paid Housing by Cimcony Inc. \$206,114.49, Weinrott maintained that it was owed a considerable, though unspecified amount in excess of what was paid for the two prototype houses and nebulous "research and development."

For advances made by Cimcony of Canada to Ticonderoga Investments and Briardale Investments, mortgages were given for the land on which the buildings were erected. These mortgages were assigned to A. G. Woolfrey in trust for Commodore Sales Acceptance, which presumably held no licence in mortmain in Manitoba. Weinrott was examined in New York City on behalf of the trustee in bankruptcy of Cimcony of Canada, pursuant to an order issued out of the Supreme Court of the State of New York, and his comment on this security, and generally on the corporate organization of the Thompson project, should be quoted.¹

Q. What was the method of financing the construction in Manitoba and Thompson?

A. The companies, Ticonderoga and Briardale, issued mortgages. To my recollection they were about \$500,000 each. I am not sure.

Q. To whom were the mortgages issued?

A. They were issued to Cimcony who assigned them to Commodore Sales.

Q. How was the value of the mortgages determined? Were the projects valued and then the mortgages given?

A. The thing was based on cost, what the actual costs were.

Q. So that Ticonderoga and Briardale had no investment in these properties at all?

A. No.

Q. Then why were they the owners? Why wasn't the owner Cimcony?

A. Well, it's not customary for the owner to be the mortgagee without merging what we call the title.

¹Exhibit 3411.

Q. What would be wrong with merging the title?

A. Well, it's illegal, that's all that's wrong with it.

Q. There is nothing illegal about it, Mr. Weinrott.

A. Maybe Canadian law is different but here you can't do that. You can't be the borrower and the lender both.

Q. Cimcony could have used its own money for the purpose of building these houses. There is nothing illegal about that.

A. But taking back a mortgage would be.

Q. There's been no taking mortgages back. They would become the owner of the lien.

A. They took back the mortgage, because in the first place this is the conventional way of doing it. You create, for the want of a better name, a straw corporation that buys the land, builds the building, either per se or gives it out on general contract and issues a mortgage to the lender.

Now, the builder and owner can be a subsidiary in the sense that the same people own the stock, the same corporation.

The big advantage is you limit the liability. There is nothing more precarious than building, creating a liability. When you say liability—I mean I am not talking about the contingent public liability, the injury to people. I am talking about the liability for payments.

Here you take Cimcony as the holder of the mortgage, and somebody files a lien. There is no better defense in the world. As a matter of fact, they tried to prove it. That was the defense the lawyers used in The Pas some time ago. That is the defense they used, that this was the same company, Cimcony was the real owner and therefore this mortgage was an illegal mortgage, and therefore their lien came ahead of the mortgage.

That would be some problem down here if you tried it that way, so that you've got to deal at arms' length as much as you can by creating two separate corporate entities.

The fact that there is identity of ownership of the stock has nothing to do with it, because then the subcontractor, the supplier, is on notice. He don't want to ship. If he don't want to work on this building, he don't want to check. His lawyers don't check the record to see who's who, that's their headache.

Now, here nobody in this country does that. The owner don't take back the mortgage. He creates a separate corporate entity and limits the liability to that job. If you get a deficiency judgment on this job, you go and hit everything you got. You could even have a lawsuit started, let's say, without good foundation. In the meantime you've got a cloud on the title, mister, and you're all tied up all over. This way it relates only to this specific property domiciled in this particular area.

MR. BAIRD: I would like to introduce as Trustee's Exhibit No. 25 photostatic copy of a memorandum to Mr. H. Wagman dated February 12, 1964 indicating it was a transcription of a long distance message from GHW in Thompson to Mr. Wagman and have it so noted.

(Document described marked Trustee's Exhibit 25).

Q. Please examine this memorandum and tell me whether you sent this long distance message to Mr. Wagman.

A. In the absence of the original, I can't certify that this is correct or a copy of the original showing the signature, but I can understand the intent of this memorandum.

Q. Have you any reason to doubt that you gave such memorandum?

A. February the 12th 1964. Oh, yes, I believe this refers—I am not certain—but I believe this refers to the difference reflected by this inventory. In other words, the inventory movement was charged to the project without any additional properties having been built to consume it yet or a portion of the stuff used.

Q. But the inventory amounted to about \$300,000.

A. That is exactly the difference between 600 and 900.

Q. That memorandum, Mr. Weinrott, states that approximately \$600,000 has been used for other than Briardale and the apartment houses.

(Discussion off the record)

Q. Mr. Weinrott, this memorandum indicates that Cimcony of Canada was holding a total of \$1,500,000 in mortgages on various projects, Exhibit 25:

'We are holding a total of \$1,500,000 on mortgages on various projects. We have signed to Commodore approximately one million.'

This statement fits in with the books of account of Cimcony of Canada Limited because in February, 1964 Commodore was owed about \$1,100,000 by Cimcony of Canada Limited, and therefore having assigned \$1,000,000 worth of mortgages to Commodore would seem to be correct.

The memorandum proceeds to read:

'Out of the amounts advanced to date, approximately \$600,000 has been used for other than Briardale and the apartment houses, leaving \$900,000 actually spent on the projects less expenses not part of the construction.'

So this would indicate that of the money spent by Cimcony, \$900,000 was used for the construction of the apartment houses in Briardale and \$600,000 was used for other purposes; is that correct?

A. I can't answer that. I don't know.

Q. We can show you that \$300,000 approximately was paid by Cimcony to Dalite.

A. On the inventory, on the shipment?

Q. The amounts paid to Dalite are exactly the same as the statements which I have shown you.

A. Yes.

Q. However, the books of account of Briardale and Ticonderoga show the payments to Dalite as being mortgages receivable to Briardale and Ticonderoga, and we are prepared to show you the original entries in the books of account of Briardale and Ticonderoga to back up my statement.

A. But have you ever seen a mortgage, have you ever seen the mortgages as recorded mortgages?

Q. We have never seen any recorded mortgages, no.

A. You don't mean 'any'.

Q. We have never seen any mortgages from Dalite.

A. You have seen the others?

Q. Yes. Did Dalite give any mortgages to Cimcony of Canada Limited?

A. Not that I can remember. I can't see any reason why they would give us.

Q. Did Dalite give any mortgages to Briardale or Ticonderoga?

A. Not to my knowledge. When you say 'give us,' what do you mean? Give us money?

Q. We are interpreting the words, Mortgage receivable in the books of account of Briardale and Ticonderoga.

A. That indicates that somebody paid money to somebody.

Q. Right.

A. If it's a mortgage receivable, does that mean that Dalite owes Ticonderoga or Briardale, whatever that is?

Q. This is what we interpret the books of account to mean. Furthermore—

A. I don't understand that."

Although this constitutes, among other things, a candid explanation of how to thwart the claims of mechanics' lienholders, Commodore Sales Acceptance had to supply \$131,674.18 to settle mechanics' liens actions against the Thompson properties. The two mortgages referred to are shown as outstanding on September 30, 1965, in accordance with the books of account of Briardale Investments in the amount of \$671,758.68 and of Ticonderoga Investments in the amount of \$1,142,462.86. In a period of some fourteen months, from August 30, 1963 to October 23, 1964, Weinrott was paid by Cimcony of Canada, Briardale Investments and Ticonderoga Investments, with moneys advanced by Commodore Sales Acceptance, his fees in the amount of \$91,125.32 of which \$13,375.57 was deducted for the payment of withholding tax to the Government of Canada, leaving a net amount paid to George H. Weinrott Inc., Weinrott's personal New York Corporation, of \$77,749.75. Morgan, in

his examination in the bankruptcy of Cimcony of Canada,² admitted that he had authorized these payments and said that Weinrott was "a facile person at extracting money." Weinrott told the examiner for the trustee in bankruptcy that he was used to making money, and apparently the people who had paid him thought he was worth this large amount. All his charges were carefully invoiced on paper bearing the letterhead of George H. Weinrott Inc., generally speaking in round figures, and carefully allocated among the three companies.³

Losses of Atlantic Funds and Weinrott's Apologia

The accounts receivable ledger of Commodore Sales Acceptance records the amount owing from Cimcony of Canada as at June 17, 1965 as \$1,945,535.40¹ and, as has been seen, this had evidently risen by the end of the month to \$1,947,624.24.² Mr. Scott, comparing the book values of the assets of Cimcony of Canada, Briardale Investments and Ticonderoga Investments with their estimated values, using the Somerville estimate for those of Briardale and Ticonderoga, treated the loss to Commodore Sales Acceptance as \$1,132,000. To this he added the \$100,000 paid by Valley Farm and Enterprises, since Commodore Sales Acceptance was the only secured creditor of Cimcony of Canada and the estimated value of the assets of the three companies had to be applied against its loans. His calculation is expressed as follows:³

<u>"Item"</u>	<u>Book Values</u>	<u>Estimated Values</u>
Cash in banks	\$ 6,401.47	\$ 6,000.00
Receivable accounts		
Housing by Cimcony Inc.	231,163.70	40,000.00
Dalite Corporation (Canada) Limited	334,402.74	Nil
Land, machinery and building costs	1,073,198.71	765,000.00
Other assets	5,150.91	4,000.00
	<u>\$1,650,317.53</u>	<u>\$ 815,000.00</u>
<i>Estimate of Loss—Commodore Sales Acceptance Limited</i>		
Loans by Commodore Sales Acceptance Limited		
to the nearest thousand dollars		\$1,947,000.00
Less estimated value of assets		815,000.00
Estimated Loss		<u>\$1,132,000.00</u>
<i>Estimate of Loss—Valley Farm and Enterprises Limited</i>		
Loan by Valley Farm and Enterprises Limited		\$ 100,000.00
Less estimated value of assets available		Nil
Estimated Loss		<u>\$ 100,000.00"</u>

²Exhibit 3679.

³Exhibit 2037.

¹Exhibit 578.

²Exhibit 2018.

³Exhibit 2049.

The available invoices from Housing by Cimcony Inc. indicate that payments were made for the purchase of display houses to be located in Thompson, Man., Buffalo, N.Y., Jamaica and the Bahamas, and that the whole amount must be treated as advances, except as offset by purchases of the Thompson and Buffalo houses which cost Cimcony of Canada upwards of \$75,000. The state of accounts as between the three companies and Housing by Cimcony was confused by the fact that in many cases invoices were missing. In May 1966 the trustee in bankruptcy of Cimcony of Canada had concluded that the only realizable assets at Thompson were the apartment and club blocks, which it estimated would bring in less than \$500,000 if sold, even after the expenditure of upwards of \$80,000 on the former to complete the structure as planned. A sale by tender was being considered because of the difficulty of finding a ready purchaser, and it may fairly be concluded that the loss to Atlantic Acceptance of all the moneys advanced to Cimcony of Canada, Briardale Investments and Ticonderoga Investments through Commodore Sales Acceptance will be virtually absolute. Before leaving the subject of Weinrott's intervention in this aspect of the affairs of Atlantic Acceptance it is only fair to state that he submitted himself voluntarily to an examination on oath in New York City by Mr. Cartwright on behalf of the Commission, at which Carrol M. Shanks also testified on October 21, 1966. Part of the opening statements of counsel for the Commission and for Weinrott is relevant, if only to show his motives in submitting to examination, and was as follows:⁴

"MR. CARTWRIGHT: For the record I would like to make the following statement.

The Royal Commission on Atlantic Acceptance Corporation Limited is anxious to have Mr. George Harold Weinrott attend before the Commission in the City of Toronto, Province of Ontario, at the expense of the Commission for his travelling expenses and accommodation expenses in Toronto in order that he may give evidence with reference to the matters pertaining to the failure of Atlantic Acceptance Corporation Limited.

I understand that Mr. Weinrott does not wish to attend before the Commission in order to give this evidence, and therefore, in lieu of this attendance this examination, which of course is voluntary on the part of Mr. Weinrott, is being conducted on this date.

MR. BERNSTEIN: On behalf of Mr. Weinrott I would like the record to clearly show why I am compelled to advise Mr. Weinrott not to come to Toronto to testify but to make himself available to testify in New York City at any time that may be convenient to the representatives of the Royal Commission.

Mr. Weinrott is now appearing without any Court order, or without any legal compulsion, but voluntarily and pursuant to arrangements

⁴Exhibit 3803.

made to suit the convenience of the representative of the Royal Commission.

Mr. Weinrott and his associates have been severely damaged in their credit standing by adverse reports reaching banking institutions as a result of gross misrepresentations in the Toronto press attributed to alleged revelations developed at hearings held in Toronto by the Royal Commission. I know that the Royal Commission had nothing to do with these distortions in the Toronto press, but nevertheless it has happened.

In my opinion this situation will continue with even more disastrous consequences if Mr. Weinrott or Mr. Shanks were to appear before the Royal Commission in Toronto. When they testify in New York, there is no occasion afforded for such distortions."

Mr. Bernstein, appearing for Weinrott, then put certain questions to him which he evidently thought would clarify some of the misrepresentations made, and to which the witness obviously gave prepared answers.

"Mr. Weinrott, the Financial Post of Toronto states that the purchase of control of Analogue Controls, Inc. 'led to the suspension of Analogue from trading on the Toronto Stock Exchange'. Is that a true statement?

A. No.

Q. What is the—

A. Evidence in the possession of your Commission clearly establishes that the contemplated purchase had nothing to do with the suspension from trading on the Toronto Stock Exchange and took place prior to the purchase.

Q. The same article states that 'Cimcony Limited formed Cimcony of Canada Limited,' et cetera. Is that true?

A. That is not true. The Commission knows that Cimcony of Canada Limited was formed two years before Cimcony Limited with ownership and control in the name of Valley Farms and Enterprises Limited which granted an option to Mr. Weinrott to purchase a fifty per cent interest in Cimcony of Canada Limited. This was never exercised and Valley Farms through Harry Wagman refused to complete the arrangement providing for the issuance of a hundred thousand dollars worth of preferred stock of Cimcony of Canada Limited in exchange for their hundred per cent interest in Cimcony of Canada Limited. All of these facts are in the possession of the Commission.

Q. Mr. Carrol M. Shanks, your associate, is referred to as a twenty-five per cent shareholder 'in Weinrott's key company in Canada.' I refer to the same article. Is that true?

A. That is not true. Mr. Shanks was never a shareholder in Cimcony of Canada Limited, as evidenced by documents in the possession of your Commission.

Q. The same article in the Financial Post refers to borrowings from Commodore Sales Acceptance Limited as 'Weinrott's direct dealings with Atlantic as described by accountant investigators.' I assume that they are attributing this to accountant investigators of the Royal Commission, and I want to state clearly for the record that I do not believe that any accountant investigators of the Royal Commission ever made any such misstatements. I think this attribution is a distortion for which the accountant investigators of the Royal Commission has no responsibility.

But I ask you, is that statement true?

A. That is not true. This is a clear reference to employees of the Commission. Yet your Commission is in the possession of evidence which clearly establishes that all borrowings from Commodore Sales Acceptance Limited was under the absolute control and direction of Mr. Morgan, and Mr. Wagman and Mr. Woolfrey and that Mr. Weinrott had nothing to do with these transactions.

Q. The same article states that 'Cimcony also appears to owe a hundred thousand dollars to Valley Farms and Enterprises Limited.' Is that true?

A. That is not true.

Q. What is the truth?

A. Evidence in the possession of the Commission clearly shows that Mr. Weinrott's only knowledge on this subject relates solely to the option agreement in which Valley Farms owned and controlled a hundred per cent of the stock of Cimcony of Canada Limited. Valley Farms and Enterprises Limited put up a hundred thousand dollars worth of Commodore Business Machines stock which was subsequently sold through Barrett-Goodfellow & Company as a result of which a hundred thousand dollars was paid into Cimcony of Canada Limited as a capital contribution from Valley Farms.

The \$82,450 was part of this transaction. This transaction took place under the control and operation of Morgan and Wagman. The loan and purchase through Barrett-Goodfellow & Company of a subordinated short term note of Atlantic was handled completely by Morgan and Wagman.

All of this is clearly established by evidence in the possession of the Commission.

Q. Now one final point. The same article in the Financial Post refers to 'receivables due from Housing By Cimcony, Inc.,' et cetera. Is that a true statement?

A. That is not a true statement.

Q. Are there any receivables due from Housing By Cimcony, Inc.?

A. No. To the contrary. There are no receivables due from Housing By Cimcony. On the contrary, there are unpaid debts due by Cimcony of Canada Limited to Housing By Cimcony, Incorporated. Orders were placed by Cimcony of Canada Limited for its various

subsidiaries with the idea of creating large scale developments and housing furnished was in the nature of initial samples with the understanding that Cimcony of Canada Limited would pay all costs which were in fact charged and paid for by Cimcony of Canada Limited up to the—I don't know what the date was. There is still an unpaid balance of sizeable amount due Housing By Cimcony, Incorporated, by Cimcony of Canada Limited."

In passing it should be said, and it will be recalled, that the involvement of Cimcony Limited in the purchase of control of Analogue Controls Inc. did indeed lead to the suspension of the latter company from trading on the Toronto Stock Exchange, because of the guarded and misleading answers volunteered by Weinrott to the exchange when its officers were seeking information as to the identity of the participants in this transaction. Equally misleading is Weinrott's reference to the "capital contribution" of Valley Farm and Enterprises which, as he knew, never received any shares. Neither for that matter did Shanks, although Weinrott clearly intended that he should. Finally the statement about money being owed by Cimcony of Canada to Housing by Cimcony is not supported by any evidence supplied to the Commission by Weinrott, or from any other source.

* * * *

Dalite Corporation Projects on Grand Bahama: Daylite of Grand Bahama Company Limited

The introduction of Dalite Corporation (Canada) Limited to the Bahamian scene, and the journey of its president, Eugene Last to Grand Bahama Island in the spring of 1963 for consultations with Allen Manus and officers of the Grand Bahama Development Company, have already been described. Last testified that he had been misled by the Port Authority and the Development Company as to the availability of materials on the island and the readiness to hand of water and electric power supply for the contemplated construction. In fact, he said, nothing was available and Grand Bahama was just a "little scrubby island with little pine trees and coral everywhere." He said that he knew exactly what the cost of the employee housing or efficiency units would be; he had estimated it at \$1,200,000, although the actual cost was \$1,500,000. In the end, as has been seen, Dalite Corporation, through Daylite of Grand Bahama, was involved in a number of construction projects which may conveniently be enumerated here.

The major projects were seven in number. The first was that of erecting the 110 efficiency units which were one-storey buildings made of prefabricated panels and erected on a concrete slab foundation, considered adequate in the Bahamian climate and much less expensive than the deep foundations found necessary in Thompson, Manitoba. Photographs of these in the course of construction were introduced into

evidence.¹ They were erected at a distance of perhaps a mile from the Lucayan Beach Hotel and consequently do not appear in the oblique aerial photograph of the work at Bell Channel Bay, which was also introduced² and may be seen overleaf. The second project was the "motel" or "boatel" and the third the marina, most of which may be seen in the foreground of the photograph with the Lucayan Beach Hotel in the middle distance. The fourth was a group of twenty separate duplex buildings containing forty apartments, also out of the picture of the larger area. The fifth project was made up of several smaller buildings described as "service buildings", including a laundry, a sewage treatment plant, the Drivers' Club and a tennis court. The sixth was construction of a house intended to be the first of a large number to be built for sale in the Lucayan Beach area, but never duplicated. The seventh was the proposed Aviation Club for which only an excavation was made and about which more will be said. These projects were distinguished by job numbers, according to a list,³ of which 202 was assigned to the motel, 203 and 204 for the efficiency units, 205 for the apartments, 211 for the sewage disposal plant, 205A to the laundry, 213 to the tennis court and 221 to the Aviation Club. The convention hall, which was originally part of the motel contract and was never constructed, was assigned the number 210.

Construction consisted of prefabricating the component parts of these structures in the Dalite Corporation plant at Toronto and shipping them, as already noted, by highway trailers placed on railway flat-cars through the United States to Fort Lauderdale in Florida, where they were trans-shipped to Grand Bahama. Daylite of Grand Bahama was the contractor on the site, although the actual work of erection was done by sub-contractors, particularly the local Lucayan Construction Company Limited and Latham Construction Company of Florida. Dalite Corporation received regular inventory and operating loans from Commodore Sales Acceptance to defray the cost of manufacture, and, as it required funds in addition to any income which it might be generating itself, informed Woolfrey of the amount needed; a cheque from Commodore Sales would be forthcoming and the amount of it added to the outstanding debt shown on that company's loan ledger. Control was exercised by Commodore Sales Acceptance by having Woolfrey appointed by the Dalite board as a necessary signing officer for all cheques issued by the company, in conjunction with either Eugene Last or Lillian Martin, on October 15, 1962.⁴ The record of these loans, transcribed from the Commodore Sales Acceptance loan ledger,⁵ appears in Table 45.

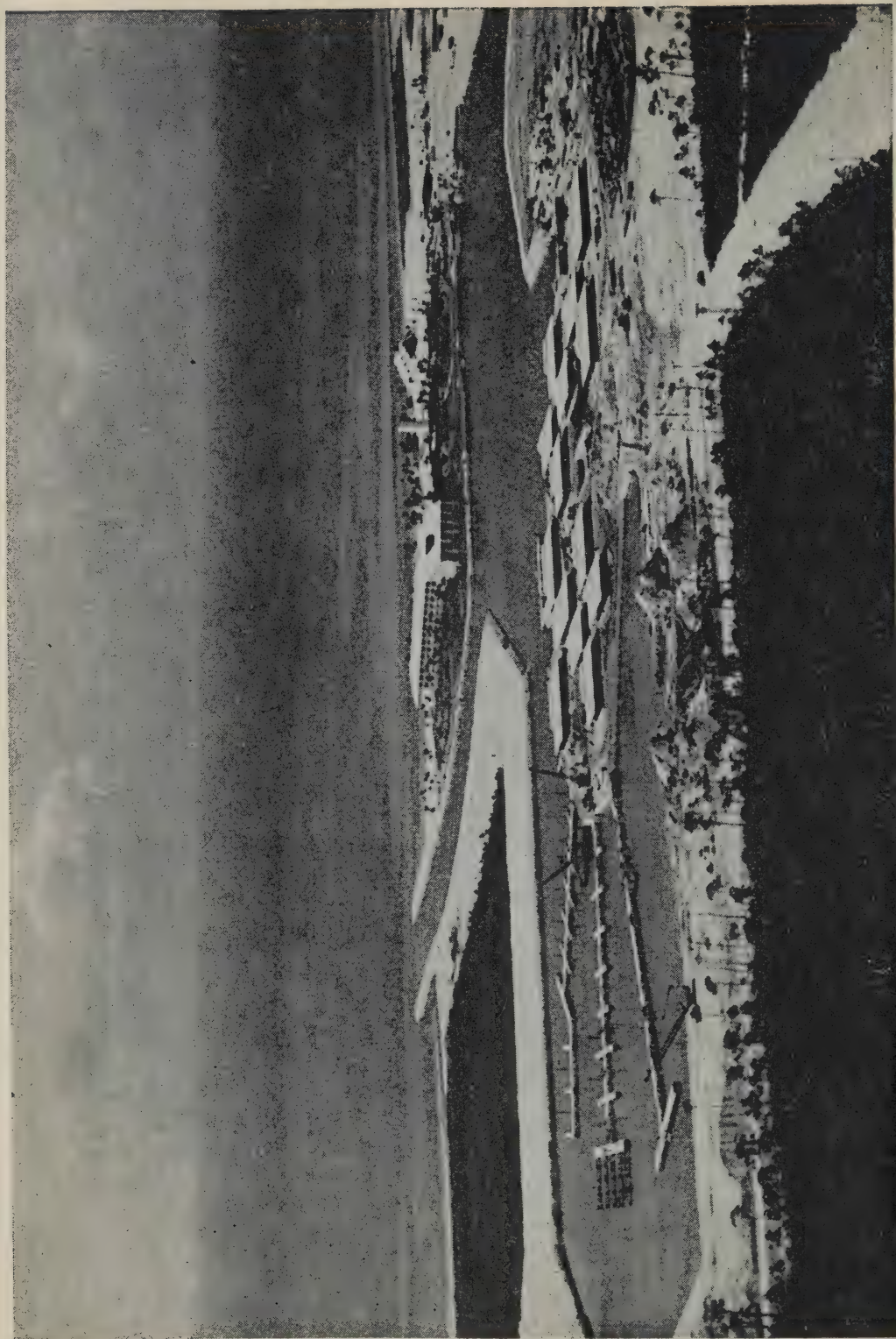
¹Exhibit 3092.

²Exhibit 3091.

³Exhibit 3093.

⁴Exhibit 232.

⁵Exhibit 953.



The fluctuation of the aggregate amount involved has already been discussed, as has also the security held by Commodore Sales Acceptance consisting of two floating charge debentures securing a total amount of \$1,000,000, the assignment of accounts receivable, and the placing in escrow of 75% of the common stock of Dalite pending discharge of the debentures. These, of course, were issued in 1962, and the amount secured thereunder wholly advanced in respect of the project in Thompson, Manitoba.

Financing of Daylite of Grand Bahama

Funds for Daylite of Grand Bahama, which had no capital during the early period of operations on Grand Bahama Island, and specifically between September 10 and December 31, 1963, were provided by Masco Construction Company Limited. This company, during the period mentioned, had paid \$109,600 to Dalite Corporation for salaries, travelling expenses, engineering expenses and similar items incurred in the Lucayan operations, which was borrowed in turn from Dalite by Daylite of Grand Bahama. One payment of \$10,000 was made directly by Masco Construction to Daylite of Grand Bahama and was repaid to the former by Dalite in March of 1964. Masco Construction had by this time ceased to intervene between the two companies, but it will be recalled that this was the original purpose of its incorporators and that it had derived its funds in the amount of \$200,000 from C. P. Morgan, Allen Manus and the Lucayan Beach Hotel Company, with \$50,000 coming from Morgan, \$50,000 apparently from Allen Manus and \$100,000 from the Hotel Company. The advances of Manus and the Hotel Company, which perhaps were both made by the latter, were paid by Daylite of Grand Bahama from one of its two bank accounts in Freeport, early in 1964, by Manus electing to offset the amount of \$150,000 against the amounts advanced to the Hotel Company by Daylite of Grand Bahama for operating expenses. Subsequently Daylite of Grand Bahama got its money through six bank accounts, of which two were at the Royal Bank of Canada in Freeport, one for sterling and the other for U.S. dollars.¹ Two were at the main branch of the Bank of Nova Scotia in Toronto,² another at the Canadian Imperial Bank of Commerce, Bloor and Lansdowne Streets in Toronto, designated as "Eugene Last building account",³ and yet another at the Canadian Imperial Bank of Commerce at Lakeshore Boulevard and Seventh Street in New Toronto, in the name of Nathan Saunders whose connection in this respect was originally with Masco Construction.⁴ All except the Bank of Nova Scotia accounts were directly concerned with payment of moneys for the Grand Bahama

¹Exhibits 3095-6.

²Exhibit 2860.

³Exhibit 3097.

⁴Exhibit 3098.

projects and, generally speaking, Daylite of Grand Bahama obtained its funds either from Nathan Saunders or Eugene Last. The operation of the Saunders account for this purpose began in October 1963 and concluded in early April 1964, after which the E. Last building account was used instead up until the end of substantial construction on Grand Bahama. Saunders would give a cheque to Daylite of Grand Bahama on the site, and the company would deposit it in an account with the Royal Bank at Freeport. His cheque would not be cleared in Toronto until after the lapse of ten days to two weeks, whereupon Dalite Corporation would issue a cheque in exactly the same amount for deposit into his account to cover the cheque which had been cleared. The next day Dalite would get a cheque from Commodore Sales Acceptance in the same amount, or in some instances more to cover other cheques falling due on that day. Two signatures would appear on the Dalite cheques to Saunders, one regularly being that of A. G. Woolfrey, and Commodore Sales Acceptance would record the advance as an additional loan to Dalite, charging it to inventory or operating loan accounts with that company. Dalite, however, would record these advances as a charge to the cost of sales expense account, as if it were paying the construction costs at the site itself, instead of recording them as loans to Daylite of Grand Bahama as might normally be expected. At the date of billing from Dalite to Daylite of Grand Bahama, which was postponed until completion of the project, or a substantial portion thereof, instead of being coincidental with the individual shipments of material, payments were recorded as a sale after having been carried as a cost of sale in the interim. Since Dalite was paying 12% interest to Commodore Sales Acceptance, these final billings would include factors for interest expense and for overhead, as well as 10% over all, added for profit. Because Daylite of Grand Bahama had the use of the money as soon as Saunders' or Last's cheque was given to it, and Dalite Corporation did not have to cover the cheque by payment into the appropriate account until it cleared at Toronto, the latter in effect enjoyed an interest-free loan from the bank during the interval, especially since its own billings to Daylite of Grand Bahama included the interest payable to Commodore Sales Acceptance.

The total amount of money paid into the Saunders bank account by Dalite Corporation for use in the Bahamas was \$665,153.21, of which all but \$345 found its way into the account of Daylite of Grand Bahama at Freeport. A great deal more went into the E. Last building account, being in sum \$3,843,423.56, of which \$60,423.46 was attributed to expenses incurred directly by Last for travel and payments to subcontractors of Daylite of Grand Bahama, or so Dalite was informed. The rest, in substance, appears to have been received by Daylite of Grand Bahama, although an amount of approximately \$30,000 has not been

completely traced. This large expenditure on the part of Eugene Last will require some further examination, since it was all incurred in the course of a year from the spring of 1964 until the spring of 1965. The E. Last building account, unlike the Saunders account, was used for other purposes than to transmit money to Daylite of Grand Bahama. It was the repository of rental payments made to Last for occupation of the building at 300 Dwight Avenue as the source of payment of interest and principal on the mortgage of that property to Hilltop Holdings; some items appear to be purely personal. On the whole the system of controls instituted by Commodore Sales Acceptance was elaborate, and, if adhered to from the time it was set up in April 1964, would have been adequate, provided that the invoices of Daylite of Grand Bahama were genuine. C. P. Morgan sent men to Grand Bahama to watch the company's operations and to report back to him and either Harry Wagman or Frank Cockburn, and the two who were permanently on this duty were Nathan Saunders and R. W. Pollock, as already remarked. Woolfrey at Commodore Sales Acceptance required Daylite of Grand Bahama to supply invoices in support of every payment made out of the Freeport bank accounts, and since there was a substantial lapse of time involved in the clearing of the Saunders and Last cheques, he was in a position to receive an invoice from Daylite of Grand Bahama before issuing covering cheques to Dalite Corporation. A report of Cockburn dated March 4, 1964,⁵ and a letter from him to Miss E. McCarthy of April 8⁶ indicate that he was taking steps to have the books of Dalite Corporation brought up to date; its general ledger had not been entered since November 30, 1964. Miss McCarthy, on her way to Freeport at that time to represent Commodore Sales Acceptance on the staff of Daylite of Grand Bahama, was instructed to mail a daily report to Toronto, listing each cheque issued and attaching the relevant invoice or payroll list and receipted copies of deposit slips. All invoices for payment through Toronto were to be approved by Julian O'Reilly who was Last's superintendent and the practical head of the construction work. These instructions were complied with;⁷ all invoices approved by O'Reilly had to be identified with the appropriate job number, and Daylite of Grand Bahama's bank statements and cancelled cheques to be picked up as early each month as possible and forwarded to Commodore Sales Acceptance by registered mail. One can only guess what success Miss McCarthy had with this uninviting task, but in late 1964, or early 1965, Cockburn took up his residence on the island to watch the progress of jobs at close range; thereafter the task of examining the invoices apparently devolved upon Woolfrey.

⁵Exhibit 3106.

⁶Exhibit 3107.

⁷Exhibit 3108.

The Accounting of Eugene Last

The amount of \$60,423.46, referred to above as having not been paid to Daylite of Grand Bahama, but accounted for by Last as expenses and invoices which he paid directly, was broken down as follows:

- (1) Cheques between December 1963 and January 1965, totalling \$38,604.69, were issued for travelling expenses over this period of fourteen months and supported by the normal type of travel account and voucher, and the size of this item was in part attributable to the fact that Last lived in Nassau, some 140 miles away from the job site, to which he travelled daily and returned by air. In Nassau he lived in style in the British Colonial Hotel and made an additional claim of \$17,000 for travelling expenses in June 1965 which was not paid.
- (2) A payment of \$10,449.89 by Dalite Corporation to Eugene Last was charged to Grand Bahama job number 201, the construction of the marina. There do not appear to be any invoices to substantiate this payment. On the same day as the deposit was made in the E. Last building account a large cheque in the amount of \$5,500 was paid out to S. J. Hogg on January 8, 1965.¹ The only evidence before the Commission as to the reason for the payment to Hogg was given by Hogg himself who testified before it on February 17, 1967.² In so far as Hogg's answers to Mr. Cartwright's questions on that occasion, and on this subject, are intelligible, it would appear that \$3,000 of this amount was advanced to James E. Thomson.³ Thomson, who may fairly be described as a promoter in the literary rather than the technical sense of the word, was at this time associated with Dalite Corporation in accordance with a rather loose arrangement, whereby he was entitled to receive commissions on business developed or sales made. Because all of Dalite's funds were coming from Commodore Sales Acceptance and cheques had to be approved by Woolfrey, Thomson was getting no remuneration at this point, because Woolfrey had concluded that he was not entitled to any. Thus he was paid in an irregular and improper manner at the expense of Commodore Sales Acceptance, on representations that the money made available was expenses incurred by Last. No part of the sum of \$10,449.89 was deposited to the account of Daylite of Grand Bahama in Freeport. The rest of the amount of \$5,500 paid to Hogg was described by him as an adjustment of personal loans made by him to Last.

¹Exhibit 3109.

²Evidence Volume 98, pp. 13486-8.

³Exhibit 3996.

- (3) Payment of an amount of \$11,955.15 was made to Eugene Last on May 6, 1964 by Dalite cheque⁴ and deposited in the E. Last building account.⁵ It is recorded in the Dalite cash disbursement journal as a payment to E. Last re Pinder Plumbing. Pinder Plumbing was a Bahamian firm and one of the sub-contractors working for Daylite of Grand Bahama. Two invoices and a statement were found in the files of Walton, Wagman & Co., the first invoice dated April 20, 1964 for \$5,000 directed to "Lucayan Beach Village Ltd. Freeport, Grand Bahama",⁶ and the signature on it resembles that of Julian O'Reilly. The second invoice is dated April 25, 1964 also directed to Lucayan Beach Village Ltd. from Pinder Plumbing Co. Ltd. in the amount of \$6,000.⁷ Both invoices purport to be for plumbing work done for job 202, the motel buildings. Accompanying these in the accountant's file is a hand-written memorandum to "Bob" from Cockburn dated November 3, 1964, headed "Subject: Pinder Plumbing Company Limited",⁸ which says "Bob: Please obtain for us a statement from Pinder Plumbing covering their contract on job 202. For your confidential information our records indicate payment of \$6,000 April 25/64 and \$5,000 April 20/64. These payments do not show on a statement dated August 4th. Suggest you request routine statement for internal audit purposes and report to us. Frank". Also among the papers is a statement from Pinder Plumbing, dated August 4, 1964 and addressed to Daylite of Grand Bahama, referring to a contract price of £ 10,125 and showing a balance left unpaid of £ 1,013.⁹ It itemizes six payments already made and there is no mention in it of either of the two invoices referred to in dollar amounts. A work sheet from the Walton, Wagman & Co. files, prepared for purposes of reconciliation of the Pinder Plumbing account referring specifically to job numbers, shows the total Pinder billings as amounting to \$42,204.91 and that Daylite of Grand Bahama had paid the company \$42,102.13 at a conversion rate of \$2.80 per U.S. dollar. Last did not pay Pinder Plumbing but did pay E. D. Sassoon Banking Company by two cheques, both dated April 26, 1964, for \$6,000 and \$5,000 in U.S. funds,¹⁰ which at the time was, in aggregate, the exact equivalent of \$11,955.15 in Canadian funds. The particulars of the payment made by Dalite Corporation are "re Pinder Plumbing." In response to inquiries made by the Commission the

⁴Exhibit 3110.

⁵Exhibit 3097.

⁶Exhibit 3111.

⁷Exhibit 3112.

⁸Exhibit 3113.

⁹Exhibit 3114.

¹⁰Exhibits 3116-7.

following letter, dated September 13, 1966, was received from R. W. Pinder:¹¹

"I have been informed that Daylite of Grand Bahama Company, Limited was invoiced by Pinder's Plumbing Ltd. as follows:

April 25, 1964	\$6,000.00
April 20, 1964	\$5,000.00

I wish to confirm that these invoices did not originate from my office and payment of the amounts specified were not received or accepted by me."

The writer then, apparently for greater emphasis and certainty bracketed "amounts specified were not received or accepted by me" and added in his own hand "the above amount shown, was by no means received by me or the above mentions company," and signed "R. W. Pinder." At the foot of the page there are the words "witness: F. K. Cockburn, P.O. Box 298, Freeport, Bahamas" and the recognizable signature of F. K. Cockburn is appended.

The facts of this third piece of business, as then ascertained, were put to Eugene Last on the second day of his testimony before the Commission.¹² Before proceeding with his explanation he asked, for the first time, through his counsel Mr. J. D. Honsberger, Q.C., for the protection of section 5 of the Canada Evidence Act and section 9 of the Evidence Act (Ontario). His explanation was that Allen Manus had come to him and asked first for \$5,000, and then a few hours later for a total of \$11,000 to cover payments which he had to make at the Sassoon Bank, and that Manus had his pilot standing by to fly him to Nassau with the cheques. He said further that Pinder always used the Daylite of Grand Bahama office to have his invoices typed and that the invoices in question were in fact progress invoices which were subsequently cancelled. Manus had said that he only required the money for two days, and that he needed it to pay Pinder and some others on behalf of Daylite of Grand Bahama within the same two days. This conversation occurred on April 26, and by April 28 Last must have been aware that Manus had not paid Pinder Plumbing. He was quite unable to explain why he had caused Dalite Corporation, as late as May 6, to record the payment made into his building account as relating to Pinder invoices, or generally why the cheques to the Sassoon Bank had not been simply recorded as an advance to Allen Manus. After a good deal of persistent questioning to which few satisfactory or, indeed, credible answers were given, Mr. Shepherd concluded his examination of Last as follows:¹³

"Q. Well, Mr. Last, all I want to get is your explanation. Is it your explanation that Mr. Manus asked you first for \$5,000 and then \$11,000. Is that right?

A. Five and six.

¹¹Exhibit 3118.

¹²Evidence Volume 65.

¹³Evidence Volume 65, pp. 8859-65.

Q. Five and six, two separate cheques?

A. First he came with six; then he, a few hours later, asked for \$5,000 in addition.

Q. So as I understand your evidence you caused to be typed up in the office of Daylite (Grand Bahama) an invoice from Pinder Plumbing for \$5,000 and one for \$6,000. Is that correct?

A. No. Those invoices were actually progress invoices what we received from Pinder's, which he eventually cancelled, and those were the invoices that I wanted him to cover in two or three days.

Q. Is the position then that the time that Mr. Manus asked you for \$5,000 and then, a matter of hours later, for \$6,000, you just happened to have, in Daylite of Grand Bahama's office, an invoice from Pinder Plumbing for \$5,000 and an invoice for \$6,000?

A. This is April 25th and April—

Q. 20th.

A. 20th.

Q. Is that correct?

A. Yes.

Q. So Daylite (Grand Bahama) have in their office proper valid invoices, one is for \$5,000 and one is for \$6,000, from Pinder Plumbing, and those are honest invoices; is that correct?

A. I am sure of that.

Q. Mr. Manus came in and, as it fell out, he happened to want to borrow two different sums of money, one was \$5,000 and the other was \$6,000. Is that correct?

A. Right.

Q. And it happened that the amounts of money which he wished to borrow and the denominations in which he wished to borrow it, just happened to coincide exactly with the invoices which Daylite (Grand Bahama) had in their possession from Pinder?

A. Right.

Q. Is that right?

A. Yes.

Q. You then write two cheques payable to the E. D. Sassoon Bank on Mr. Manus's direction?

A. Yes.

Q. And you do this on the 26th of April, is that correct?

A. Yes.

Q. Mr. Manus was supposed to pay you back, or he was supposed to pay Mr. Pinder within, I think you said, two days, and on another occasion you said a couple of days?

A. He said a couple of days.

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Q. And he did not pay it?

A. Right.

Q. On the 6th of May Dalite (Canada) writes a cheque to your account, that being the day on which those cheques cleared, for sufficient funds to cover those cheques, and they record that advance, not as being an advance to Mr. Manus, but in payment of Pinder invoices; is that correct?

A. Right.

Q. Now, it is quite clear, is it not, that everybody must have known by then that this was not a payment to Pinder Plumbing?

A. By the 10th?

Q. By the 6th of May?

A. Oh, by the 6th of May, but I was not back to straighten out at this end.

Q. When did you come back?

A. Gosh, I could not tell you.

Q. Shortly thereafter?

A. A week or two weeks later.

Q. I am sure one of your first acts would be to straighten out these records which, unstraightened, would be capable of an unfavourable construction to you. Did you tell people to correct that: 'this is not true, that is not a payment to Pinder, that is a payment to Manus'. Did you do that?

A. Right.

Q. And why did they not correct it?

A. With all the problems that I had at the time do you think you can keep everything in mind?

Q. But you remember telling them to correct it?

A. I remember telling the girl to send a letter attached to correct it.

Q. To whom was she going to send this letter?

A. To the Toronto office.

Q. You remember telling the girl? Where, in the Bahamas?

A. In Freeport.

Q. Oh, I see. The books, though, were kept—the books to which I refer, where it was recorded that this was a payment to Pinder Plumbing which had been paid by you, they were kept at Dalite (Canada). Those books were not corrected?

A. What about the books in Freeport?

Q. Now, that is a good question, Mr. Last. What about the books at Toronto which record, in the proper place for it to be recorded, that

when Dalite (Canada) wrote a cheque to you to cover those cheques, Dalite (Canada) recorded that that money had been paid to Pinder Plumbing and charged it to the motel. Why was that entry never corrected, if the facts were as you have related them?

A. That should have been corrected here in Toronto, which was in Commodore's office, because the books of Daylite (Grand Bahama) were kept in Commodore's office by Mr. Woolfrey—by Mr. Cockburn, I believe.

Q. Then do you say first that those very invoices now admitted into evidence as Exhibits 3111 and 3112 were, to your knowledge, invoices sent to Daylite (Grand Bahama) or to Lucayan Beach by Pinder Plumbing, drawn by Pinder Plumbing in the full expectation that those invoices would be paid? Is that correct?

A. Right.

Q. Then do you say that these invoices were paid in the sense that the same sum of money was later put together with other sums of money and an invoice submitted for a different but higher amount?

A. Yes, I believe there was a credit issued on those two invoices and new invoices submitted.

Q. I show you, Mr. Last, Exhibit 3114, which is a statement of Pinder Plumbing, dated the 4th of August, 1964, some months after those invoices, setting out the various invoicing for the whole of their contract. The statement does not include those invoices. Which invoice, subsequent to the 25th of April, is the invoice which includes \$11,000 American?

A. Well, I said there should be a credit there. (Indicating) I don't know how they worked it out after.

Q. You told me that later there were other invoices which included the sum of these two, and when I look over their statement I see no invoice subsequent to the 25th of April which could possibly include those, because none amount to—

A. I don't know, because this is based on Job 202, this is Job 202, and this is Job 204. (Indicating.)

Q. Have you been afforded an opportunity to make a full explanation, and is that the explanation? Or do you wish to go into it any further than that?

A. Well, it's very hard to recollect everything right now."

Last said that two boats belonging to Manus had to be "repossessed" in connection with these advances, but since there was a well-defined procedure for making loans to the Hotel Company, or Manus, from Daylite of Grand Bahama without resorting to false invoices, Last's explanation must be considered a fabrication. In a private and confidential report by

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Pollock to C. P. Morgan dated October 23, 1964 there appeared the following comment:

“Mr. Eugene Last has, as you are now aware, been far from co-operative. It would appear that in spite of any discussions you have had with him, he has been under the impression that my work here would be of a very brief and temporary nature. The situation developed into a crisis last Monday when he apparently learned of my investigations, and the type of information I was requiring. Upon my return from Nassau, I was confronted by an unpardonable public outburst, which prompted my immediate phone call to you. He stated emphatically to others, that he does not propose to have any Accountant sent by yourself, on this Island. Close associates of his, had since informed me that such an outburst is a method used by Mr. Last on other occasions for similar obstruction to anyone opposing his personal interests. This merely confirms your anxiety regarding your own interests in Freeport.”

By January 20, 1965 Last had apparently triumphed, and Cockburn, in a report of that date sent from Grand Bahama, discussed the problem of Pollock's disposal and the termination of his employment as at December 31, 1964. The following comment is relevant to the Pinder Plumbing transaction:¹⁴

“We had more discussions with Mr. Pollock and must conclude that he was obtaining too much dangerous information.

He was asked by me to look into certain invoices totalling \$11,000 issued by Pinder Plumbing. I was informed that these were indeed phony invoices and that the money was used to purchase two boats from Mr. A. Manus which would be valued at no more than \$4,000.00.”

These communications are material because they show quite clearly that Morgan's organization both in Toronto and on the island was in possession of information that must have convinced Morgan of Last's dishonesty, assuming that he had not taken his measure long before. It has been seen, however, that Morgan was in no position to sever his connection with Last with safety to himself, and the shareholders and creditors of Atlantic Acceptance were to suffer, as in many other instances, from this enforced tolerance of fraud.

Inflated Billings as an Element of Dalite's Losses

At this point there must be examined, in accordance with the evidence given to the Commission, the reasons for the magnitude of the losses incurred by Dalite Corporation in its transactions with Daylite of Grand Bahama. Set out on Table 49¹ is an analysis of the Lucayan

¹⁴Commission file: Reports by Chartered Management Consultants (Canada) Limited.

¹Exhibit 3119.

project in terms of billings and costs. The analysis is based on budgets and feasibility reports of the various projects, the first column setting out the job number, the second column describing it and the third column, entitled "Original Construction Budget or Estimate", indicating what the management of Dalite Corporation expected each of the projects to cost from their inception, in spite of afterthoughts expressed by Eugene Last. The fourth column shows the total of the invoices sent to Daylite of Grand Bahama and asserted to be the cost of the projects after completion plus the additional factors referred to, and the fifth column shows additional liabilities that Daylite of Grand Bahama had incurred, not included in billings by Dalite Corporation and not paid for by that company. The sixth column is the sum of the fourth and fifth columns, entitled "Total Value Asserted by the Dalite Group", and the seventh column shows the value certified, including the profit margin, by the consulting engineers, Duncan Hopper & Associates, in their completion certificates. The eighth column shows the sale price of the construction accepted by the Lucayan Beach Hotel Company, before and after the Atlantic collapse, in U.S. dollars and actually paid for those items which were purchased. The ninth column—"Proceeds from Other Sales or Claims Outstanding in U.S. Dollars"—shows values attributed to assets by the receiver and manager or obtained on sales; it includes assets that were apparently gifts to the Hotel Company by Daylite of Grand Bahama and for which there may be claims by that company against it. Finally the tenth column, entitled "Apparent Excess Billings by Dalite Corp.", in Canadian dollars shows the amounts by which Dalite Corporation invoices exceed the amounts of money for which the assets were actually sold, or for which they are now valued.

The 110 efficiency units, referred to so often in this account, taken together, were the first project that Dalite Corporation and Daylite of Grand Bahama embarked upon; job 203 was the number assigned to the first group of 60, and job 204 to the second group of 50. In the files of Walton, Wagman & Co. was found a memorandum headed "Budget—Bahama Project" which is evidence as to what initially the construction of these units was believed to be going to cost.² The estimate for the 60 units was \$270,096, the cost per unit being shown as \$4,501.60. Below the cost per unit there is written "S.P. \$6,300". If "S.P." means sale price, as one might expect, it would constitute a mark-up of 40%. There is no separate budget for the extra 50 efficiency units, but since they were all built at substantially the same time, it is fair to assume that the unit cost was, or would have been, budgeted in the same amount, giving an aggregate cost for 110 units of \$495,176. The total amount of the invoices sent to Daylite of Grand Bahama in respect of this project at the end of 1964 was \$1,589,760, and this was over 300% of the

²Exhibit 3120.

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budget. It will be recalled that on the completion of the units Daylite of Grand Bahama was not paid for them, but rented them to the Hotel Company for sixty months at \$16,500 per month, providing a total of \$990,000 in U.S. funds for the term of the lease. Daylite of Grand Bahama never paid these invoices in the aggregate, although some partial payments were made through book-keeping entries made by Commodore Sales Acceptance when that company changed its debtor from Dalite Corporation to Hugo Oppenheim und Sohn, and arbitrarily allotted the reduction in the total debt of Dalite Corporation to specific job numbers in its accounts. No money changed hands. The records of Duncan Hopper & Associates contain copies of completion certificates furnished to Dalite Corporation indicating costs based on information supplied by the company, although no originals or copies have been found in the company's files. These are headed "COMPLETION CERTIFICATE PROJECT 203 and 204"³ and constitute a summary of what Dalite Corporation and Duncan Hopper & Associates estimated that the efficiency units cost, saying: "These costs have been summarized from data provided by the contractors on completion of the project." The estimate, which cannot be considered an independent appraisal, is for \$1,512,276.56. The detailed summary is as follows:

In Plant Costs

75 Efficiencies	\$ 465,575.00
35 Efficiencies	\$ 221,755.00

On Site Costs

75 Efficiencies	\$ 251,874.50
35 Efficiencies	\$ 140,600.00
	<u>\$1,079,804.50</u>
4% Engineering Design and Supervision	\$ 43,196.16
	<u>\$1,123,000.66</u>
5% Travelling	\$ 56,155.03
	<u>\$1,179,155.69</u>
7% Financing	\$ 82,547.90
	<u>\$1,261,703.59</u>
Land Value and Cost	\$ 47,613.34
	<u>\$1,309,316.93</u>
5% Overhead (Legal etc.)	\$ 65,470.85
	<u>\$1,374,787.78</u>
10% Profit	\$ 137,488.78
TOTAL	<u><u>\$1,512,276.56</u></u>

³Exhibit 3121.

In the "On Site Costs" Dalite Corporation included the amounts relating to the efficiency units which it borrowed from Commodore Sales Acceptance and sent to Daylite of Grand Bahama, recording this as cost of sales. These amounts are included in the bill to Daylite of Grand Bahama, together with the various percentages for engineering, traveling, financing, overhead and profit. It must be assumed that the expression: "Land Value and Cost" should have been written: "Land Value at Cost" and may include legal expenses. There is no explanation as to why Daylite of Grand Bahama was billed some \$77,000 more than this amount, and no contract or any other document setting out the basis upon which Dalite Corporation was supposed to calculate its invoices to Daylite of Grand Bahama has been found, or can be assumed to exist.

No budget documents were found by Mr. Wolfman relating to job number 205 which was construction of 40 apartment units with a swimming pool on Hong Kong Island. The Duncan Hopper & Associates completion certificate, however, exists and it is in the amount of \$750,-177.63,⁴ but Dalite Corporation billed Daylite of Grand Bahama in the amount of \$810,000. The completion certificate takes into account all the percentages added on in the case of the efficiency units and includes an item for the cost of land. There would not appear to be any rational justification for the addition of almost \$60,000 to the amount calculated in the completion certificate. Job 201, the marina with 126 slips and a boat repairing yard, was the subject of a feasibility report by Duncan Hopper & Associates⁵ in which the total estimated cost as at January 6, 1964 was \$1,091,031.20. This included a full description of all the components of the marina, and the structure was built in accordance with a detailed and estimated plan made independently by the engineers. Dalite Corporation actually billed Daylite of Grand Bahama \$1,091,000, but the latter also assumed: first, the liability to Five Wheels for 3% of the gross profits and the use of six slips for 30 years, subsequently valued at \$648,000, or \$600,000 in U.S. funds when finally compounded by the trustee; second, costs in the amount of \$325,000 incurred by Five Wheels; and third, liability for the advance of \$100,000 by the Grand Bahama Development Company to Five Wheels, all of which have been referred to. The Duncan Hopper estimate includes dredging and other work for which Daylite of Grand Bahama paid Five Wheels. The direct cost of building the marina was \$2,416,000 and the engineers completion certificate for project 201 is in the amount of \$2,188,572.50.⁶

All the projects referred to thus far were sold by Daylite of Grand Bahama to the Lucayan Beach Hotel Company. The sum of the invoices sent by Dalite Corporation to Daylite of Grand Bahama, added to the

⁴Exhibit 3122.

⁵Exhibit 3123.

⁶Exhibit 3124.

indebtedness or liabilities which the latter acquired for the benefit of Five Wheels, was \$5,463,000 in Canadian funds. Initially Daylite of Grand Bahama sold them to the Hotel Company for \$3,888,000 which, as has been seen, was added to after the collapse of Atlantic by the receiver and manager to the extent of \$400,000 in favour of Daylite of Grand Bahama at the Hotel Company's expense, although the settlement with Five Wheels did not involve the payment of any money since the shares of that company held by Associated Canadian Holdings were exchanged for the debentures originally issued to it.

According to the evidence of Eugene Last, he had been involved in the marina project from the start. Shelman had asked him to prepare the tenders for its construction in the summer of 1963 while dredging was still being undertaken by Freeport Construction Company, and they were called by Last in Miami. The successful tender was that of Latham Construction Company, but it required \$100,000 as "mobilization fees" which Shelman could not produce. Last obtained this from the Grand Bahama Development Company for Five Wheels by personally negotiating the advance with James E. Maher, the Development Company's executive vice-president. He said that he was anxious at this point to see the marina contract disposed of, but not to Daylite of Grand Bahama. However, Morgan told him that both Manus and himself held an interest in Five Wheels, and he suggested that this might have had something to do with the favourable terms given to Five Wheels of Grand Bahama by Daylite of Grand Bahama in acquiring the site and the contract. Maher's recollection, given to the Commission on March 14, 1968 in Florida, was that Five Wheels was thrust out of the contract over the strenuous objection of Shelman.

Job 202 was the motel, consisting of 100 rooms, a shopping area, service buildings and swimming pool, and the budget documents⁷ contain an estimate of \$841,704 as the cost of construction, calculating the gross profit at \$1,050,000 minus this sum, or \$208,296. Daylite of Grand Bahama had committed itself to build and sell the motel complex to the Lucayan Beach Hotel Company for \$1,350,000, but the invoices sent by Dalite Corporation to Daylite of Grand Bahama for job 202, added together, provide a total billing of \$3,348,000. The Duncan Hopper completion certificate for this project⁸ was for \$3,225,151.60, but the records are so fragmentary that it is impossible to say how much Dalite Corporation really laid out for its construction. As in the case of other projects, no originals of the completion certificates have been found, and the available copies are not addressed to anybody in particular, being used by Duncan Hopper & Associates to compute their engineering billing of 4% of cost. Last stubbornly maintained in his evidence before the Commission that, although the original arrange-

⁷Exhibit 3120.

⁸Exhibit 3125.

ment for payment for the motel complex at cost plus 10% had been changed to the fixed price of \$1,350,000 in U.S. funds, with \$150,000 payable at once and the balance of \$1,200,000 on completion, and changed again to postpone the \$150,000 payment to the date of completion,⁹ it had been agreed to revert to the cost plus 10% basis, exclusive of the furnishings, on Allen Manus' insistence because he did not approve of the plans and required changes on behalf of the Lucayan Village Company. He said that this decision was embodied in a letter prepared by Mr. B. W. N. Apple of Salter, Reilly & Co., that it had been signed by himself for Daylite of Grand Bahama and Manus for Lucayan Village, and had been given to Morgan. He said further that he had protested to Morgan when the Lucayan Beach Hotel prospectus referred to a contract price of \$1,350,000 and said that the motel could not possibly be finished for this figure. All the evidence and, indeed, the recollection of Mr. Apple militate against Last's view of the transaction, including the fact that \$1,350,000, plus \$75,000 for extras, was paid in July, 1964 by the Lucayan Beach Hotel Company and was all that was paid on behalf of Lucayan Village. He admitted that he had not made any attempt to collect from that company on a cost plus basis, but that at the opening of the motel, when Manus had come to him to borrow \$55,000 for pre-opening expenses, he had given him a final figure of close to \$3,000,000, at which point Manus had "started screaming" and had refused to talk to him during the ceremony, except to say that he would straighten out everything with Morgan. The story about the reversion to cost plus 10% for the motel and its ancillary works may well have been used by Last to justify the excessive billing by Dalite Corporation to Daylite of Grand Bahama and to rectify a serious miscalculation, but it would appear to be apocryphal.

The Drivers' Club was described by Last as a "native club" in Freeport, presumably to distinguish it from the large tourist establishments. No job number was allotted to it and no budget exists. It seems to have been constructed on the side as a portion of the motel project, although by no means contiguous physically, and the Commodore Sales Acceptance people, with the possible exception of Morgan, did not know, at least in the early stages, that it was being built. It was originally built for a company called Bahama Entertainment Limited, owned by two Americans named Kellinson and Irwin, and, according to Last, Allen Manus and Nathan Saunders were their partners. The club was originally planned as a modest affair and derived its name from an attached facility for racing small vehicles called "go-karts". Last said he was at one time a director of Bahama Entertainment Limited and that R. W. Pollock also had an interest, but it is more likely that Pollock's interest was in trying to control the costs of construction and

⁹Exhibits 2610.5 and 2610.6.

operation. Kellinson, who was a friend of Morgan according to Last, and Irwin, who bought stock in Molly Corporation and the Lucayan Beach Hotel Company, and in consequence may have once been a friend of Allen Manus, were bought out by payment of \$15,000 of Daylite of Grand Bahama money early in 1965; thereafter Saunders managed the club and asserted that Morgan had given him a 50% interest in Bahama Entertainment. Its estimated value of \$40,000 after the collapse of Atlantic is quite inconsistent with the total billings in respect of its construction made by Dalite Corporation to Daylite of Grand Bahama in the amount of \$216,000.

The remaining projects, with the exception of that of the International Aviation Club, which will be dealt with more fully, were job 205A, a laundry, or "laundromat", constructed in the apartment area which Dalite Corporation invoiced at \$43,250, and which Lucayan Beach Hotel and Development acquired at a valuation of \$30,000 after the Atlantic collapse; the sewage treatment plant, invoiced by Dalite Corporation at \$200,000 and acquired by the Hotel Company, also after the collapse, for \$160,000; the electric sub-station, invoiced at \$118,135, and after the collapse acquired by the Hotel Company at a value of \$15,000, possibly arrived at by taking into account the adjustment in favour of Daylite of Grand Bahama of \$400,000 already referred to; the tennis court, billed at \$25,166 and acquired after the collapse by the Hotel Company for \$17,350; all of these were apparently undertaken without budgets, estimates or contracts. A model house, intended for display on a tract of land bought by Daylite of Grand Bahama, which planned to build a number of similar houses for sale, was constructed from prefabricated parts supplied by Dalite Corporation and charged to Daylite of Grand Bahama in the amount of \$43,200; after the collapse it was sold for \$30,00 by the receiver and manager.

For all the construction carried out at Lucaya and in Freeport—and this excludes what is described as "other projects" on Table 49—the total billings by Dalite Corporation to Daylite of Grand Bahama amounted to \$8,384,511; the sum of the additional indebtedness incurred by Daylite of Grand Bahama in respect of construction was \$1,073,000; so that the total value asserted by the "Dalite group" was \$9,457,511 against a realization after the collapse of Atlantic Acceptance of \$6,552,350, which includes \$70,000 for unrealized assets like the Drivers' Club. The excess of Dalite Corporation invoicing over Daylite of Grand Bahama realization, before and after the collapse, amounted to \$2,591,211 in Canadian funds. It is impossible to say how much money Commodore Sales Acceptance advanced in respect of each particular job, because, when it did so to Dalite Corporation, it recorded an inventory and operating expense loan, and when the latter sent invoices to Daylite of Grand Bahama, copies of which were sent to Commodore Sales Acceptance, the inventory loan was reduced

and a specific "project account" was set up in an amount exactly equal to whatever amount Dalite Corporation saw fit to bill. When, for instance, the loan by Commodore Sales Acceptance to Dalite Corporation was reduced by more than half, as a result of the transaction already described which substituted Hugo Oppenheim und Sohn as debtor for Dalite, the amount of the reduction was shown as a credit in a credit account, thus making clear the inability of Commodore Sales Acceptance to allocate accounts to particular construction jobs. The total of all the invoices which Dalite Corporation sent to Daylite of Grand Bahama, including those for advances of something in the order of \$2,000,000 to Lucayan Beach Hotel and Development, is shown on Table 49 as \$12,119,455, and the fact that the highest amount of the loan shown as outstanding from Dalite Corporation to Commodore Sales Acceptance on Table 45 was approximately \$7,350,000 emphasizes the extent to which Dalite Corporation billing was excessive; although, since Commodore Sales Acceptance was financing both overhead and invoicing most of the time, the difference cannot be explained by any comprehensible system of calculation. I am compelled to conclude that much of this billing was completely capricious and involved massive duplications, the most signal example of which is the amount of \$3,582,000 entered on the books of Dalite Corporation as an account receivable from Daylite of Grand Bahama and Lucayan Beach Hotel and Development on June 30, 1965, and which is in great measure responsible for the total of excessive billing shown on Table 49 in the amount of \$4,452,794.

The building lots on which Daylite of Grand Bahama proposed to build Dalite houses cost \$212,355 and were disposed of, one might think, improvidently in view of the rapid development of the area, for \$170,000. Dalite Corporation, which advanced the funds to buy them, billed Daylite of Grand Bahama in the usual way, and charged this amount against its costs of sales expense, which makes no accounting sense at all. Another deposit put down by Daylite of Grand Bahama to acquire land in the amount of \$11,935 was apparently only given a value of \$5,000 by the receiver and manager, and a 99-year lease on service station land, for which Daylite of Grand Bahama is alleged to have paid \$27,125, was not given any value at all; it would appear that the lease was cancelled.

The advances and apparent gifts made by Daylite of Grand Bahama to the Hotel Company have already been referred to in some detail. In fact during the early part of 1964 the Hotel Company was largely dependent upon Daylite of Grand Bahama for operating funds. Although Dalite Corporation provided all the money which Daylite of Grand Bahama advanced, having borrowed it from Commodore Sales Acceptance, the Hotel Company was at all times dealing with Daylite of

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Grand Bahama to which it gave worthless cheques drawn, as has already been described, on its account with British Mortgage & Trust Company in Toronto. Dalite Corporation at one point sent invoices to the Hotel Company for the total amount in respect of these advances of \$2,083,463. Of this amount \$515,935 was nothing but a duplication of invoicing, since it had already been set up in an advance account. The billing of June 30, 1965, mentioned above, included an additional \$1,500,000 attributed to advances made to the Hotel Company, and appears to be as invalid as that for rental of the efficiency units at \$157,325 which Dalite Corporation did not own. Table 49 shows repayment by the Hotel Company in the amount of \$682,000, although not specifically against these invoices, and the amount of \$450,000 in the succeeding column represents the gifts made by Daylite of Grand Bahama to it in respect of settlements made with it, or on its behalf. According to Eugene Last, the amount of \$250,000 which Daylite of Grand Bahama paid the Grand Bahama Development Company on behalf of the Lucayan Beach Hotel Company, specifically releasing the latter from any obligation to repay, was paid, at the behest of Allen Manus and with the approval of C. P. Morgan, to avoid making a false statement in the latter company's prospectus, in which no reference to this liability to the Development Company was made. Of course the amount of money apparently donated by Daylite of Grand Bahama to the Hotel Company, shown as \$450,000, came directly from Dalite Corporation and indirectly from Commodore Sales Acceptance, and there is no evidence that any gift was made by Dalite Corporation to Daylite of Grand Bahama. Thus the amount is included in the table as potentially recoverable, since the debt is apparently outstanding between Dalite Corporation and Daylite of Grand Bahama.

Included in the invoices issued by Dalite Corporation on June 30, 1965 was one for \$502,393 for interest, to which no recoverable value was attributed on Table 49. This invoice must have been issued *in terrorem*, since Dalite Corporation had already included its interest factor in the invoices directed to Daylite of Grand Bahama. Similarly the miscellaneous expense charge of \$53,719, which purported to represent charges for travel and promotion, is not related to any agreement between Dalite Corporation and Daylite of Grand Bahama, and cannot be considered in any sense as recoverable. It is separate from Eugene Last's additional bill of \$17,000, and it may well be that the management of Dalite Corporation attempted by this billing to recover from Daylite of Grand Bahama all the travel expenses made by everybody concerned with its own operations.

To summarize consideration of Table 49, it appears that Dalite Corporation billed Daylite of Grand Bahama and the Lucayan Beach Hotel Company just over \$12,000,000, of which approximately \$4,450,000 proved to be excessive as duplicate billings unsupported by the

facts, and therefore not taken into account in Mr. Wolfman's financial statement for Dalite Corporation as at the date of its bankruptcy on August 31, 1965.

Inflated Sales of Dalite Corporation and their Significance

One explanation for the excessive billings which have just been discussed may be found in documents taken from C. P. Morgan's office by the Commission's investigators, which include an unsigned agreement prepared for an unspecified date in March, 1965 between Morgan, Last, J. E. Thomson and S. J. Hogg, the last being described as executive vice-president of Dalite Corporation.¹ Although it was never implemented and it is difficult to believe that Morgan could have taken his three associates seriously, it must be remembered that his principal concern at this point was to free Atlantic Acceptance from the entanglements of its mounting industrial loans in which his self-imposed rôle of "secondary banker" had caused it to be enmeshed. The parties were said to agree as follows:

"It is the purpose of this Agreement to identify various interests of the parties hereto, and to merge these interests and assets as set out below, into one holding corporation in which each of the parties hereto shall hold a 25% interest.

In order to accomplish the purpose outlined above necessary promotion and development funds shall be provided through a Nassau corporation for the use of the parties hereto.

It is also agreed by all parties hereto that the following Companies being Dalite Corporation (Canada) Limited, Dalite Company of Delaware Limited, and Daylite Company of Grand Bahama Limited, shall be completely discharged of all liabilities to either or both Atlantic Acceptance Corporation Limited and/or Commodore Acceptance Corporation Limited.

The assets and interests referred to are as follows:

- 1) Dalite Corporation (Canada) Limited
- 2) Dalite Company of Delaware Limited
- 3) Daylite Company of Grand Bahama Limited
- 4) Daylite Engineering
- 5) Inter Avia Limited
- 6) Lucaya Marina Limited
- 7) Contracts with Congress Inns Incorporated
 - a) Nassau
 - b) St. Martins
 - c) Huntsville
 - d) Kitchener - Windsor
- 8) Contract Government of Peru

¹Exhibit 3126.

It is the further intention of the parties to include any and all contracts and interests in Corporations pertaining to Dalite activities in all spheres of the world.

In addition certain other specific programmes, presently in effect or under negotiation by the parties hereto other than direct Dalite activities, shall be included in the holding company referred to, i.e.

- 1) Casino operation—Grand Bahama Island
- 2) Private Bank—St. Kitts—British West Indies
- 3) Insurance Agency—Nassau and Freeport
- 4) Shares in Public Company that will hold Dalite Corporation (Canada) Limited
- 5) Collection Agency participation—Toronto—Ottawa—Montreal

In summation, the parties hereto agree that all decisions with respect to the payment of salaries—expenses and dividends shall be made by the majority of the four at future regular company meetings.

Approved and signed at Toronto, this _____ day of March, 1965.

C. P. Morgan

E. Last

J. E. Thomson

S. J. Hogg"

This grandiose conception emanated from the Dalite office and not from the somewhat more sophisticated atmosphere of 100 Adelaide Street West. Another document found in the Wagman, Fruitman & Lando files² is a memorandum on the public financing of Daylite of Grand Bahama Limited, also undated, so that it is not possible to say that it is contemporaneous with the contemplated agreement of March, 1965. It envisaged a public company with an authorized capital of 200,000 shares valued at \$5.50 per share. Nothing was ever done about this proposal either, but the excessive billings of Dalite Corporation to Daylite of Grand Bahama would have transformed the financial statement of the former when treated as sales revenue, changing the position of loss to one of profit, and wiping out the deficit existing prior to the Grand Bahama undertaking and any deficit incurred as a result of it; indeed a surplus position could have been shown as a starting point for any public offering of shares. Another scheme, about which Eugene Last gave evidence to the Commission, was seriously considered in May of 1965 and must be referred to again. A tantalizing glimpse of the type of information being offered to the public, or to persons interested in inquiring into the stability of Dalite Corporation in 1964 and 1965, is provided by a copy of a credit report found in the files of Commodore Sales Acceptance, made by a firm which is not identified because its name does not appear on the copy found.³ It begins by giving total

²Exhibit 3127.

³Exhibit 3128.

sales figures for Dalite Corporation of \$30,000,000, goes on to say that trade payment is slow and then, under the heading "Finance", proceeds:

"October 13, 1964, Eugene Last, President, declined financial statement however during course of conversation, the following figures were obtained:

Accts. Rec.	\$4,000,000	+	Accts. Payable	\$300,000
Mdse.	750,000		Owing Commodore	
Fixt & Equip	750,000		Acc.	750,000+
			CAPITAL STOCK	47,030

When previously interviewed, November 5, 1963, Eugene Last stated that he expected volume for fiscal year 1963 to be between \$35,000,000 and \$50,000,000. He stated during current interview that company had not quite reached this level however volume is expected to continue steady at slightly over \$30,000,000."

In fact the volume of sales for Dalite Corporation for the six-year period prior to the summer of 1965 was something in the order of \$15,000,000 all told, and for the year ended December 31, 1963, which would have been the latest date for a financial statement to which reference might have been made had it not been "declined" to the author of the report, the volume of sales was approximately \$1,709,000. It should, of course, be said that this document is only evidence of the information that might have been available to the public at the time, and is not evidence that Last was accurately reported. All attempts by the Commission's investigators to identify the author, or the firm which employed him, have been unsuccessful.

Embellishment of "Aquila III"

No one in fact was more closely connected with the projects on Grand Bahama to which Dalite Corporation and Daylite of Grand Bahama were committed than Eugene Last. In spite of every disappointment and all antagonisms, he retained the support, if not the confidence of C. P. Morgan until the last hour of the independent existence of Atlantic Acceptance Corporation. No examination of the reasons why the costs of Daylite of Grand Bahama projects exceeded estimates by such substantial and indeed startling sums would be complete without some attention being paid to what is known, or has come to light, about his personal transactions. It has already been seen that Morgan's representatives on the spot found him difficult to work with and resentful of even the most justifiable inquiries. Both Pollock and Saunders had reason to repent of having crossed him in their efforts to keep Morgan informed and protect the interests of Atlantic Acceptance. One payment which caught the eye of the investigators, made by Daylite of

Grand Bahama with funds advanced to Dalite Corporation by Commodore Sales Acceptance, involved the rebuilding of a yacht, which none of these companies owned but belonged to Mrs. E. Last according to its certificate of registration.¹ Its name was "Aquila III" and the certificate shows that it was built in 1959 in Tilbury, Ontario, and rebuilt in Toronto in 1962 by Master Welders Limited of Port Credit. After giving details of its length and twin diesel engines, tonnage of 20.77 tons and ownership of all 64 shares by Elsie Last, 44 Cumberland Drive, Port Credit, Ontario, it states that Eugene Last of the same address had been appointed "manager". On an original letter from J. W. Humphries, assistant registrar of shipping for the Department of National Revenue (Customs & Excise), dated February 24, 1964, inquiring as to whether Mrs. E. Last was still owner of the vessel, there appears in handwriting at the foot of the page "Dear Sir: Yess. Mrs. E. Last is still owner of AQUILA III address is same."² An invoice was found among the records of Daylite of Grand Bahama from Rybovich & Sons Boat Works Inc., West Palm Beach, Florida, dated April 25, 1964, addressed to that company, billing the amount of \$8,022.57 for "hardware for docks."³ On this is a note in the handwriting of Frank Cockburn, saying "original approved by Julian O'Reilly", O'Reilly at that time being vice-president of Daylite of Grand Bahama. Added to that are the words "job 202", referring to the marina. This invoice was paid for by Daylite of Grand Bahama cheque No. FP-14207, dated April 21, 1964, signed by Nathan Saunders and Julian O'Reilly.⁴ It will be noted that this cheque was written four days before the date of the invoice and this must be regarded as unusual. A further copy of this invoice, with work orders attached, was obtained from Rybovich & Sons, and each page of the work orders has the name "Aquila" endorsed on it.⁵ The work orders, which consist of some twenty pages, wholly relate to repairs to a boat, and another invoice was attached to it, dated July 15, 1964 and numbered 985, also addressed to Daylite of Grand Bahama, in the amount of \$3,000.39. Although there is no evidence of payment of this, the hourly rates for work set out in it coincide with the "Aquila" invoice in respect of "hardware for docks." One of Miss McCarthy's daily reports from Daylite of Grand Bahama, dated April 22, 1964, gives a list of cheques drawn on the company's U.S. dollar account.⁶ No. 14207, dated April 21, was made payable to Rybovich & Sons in the amount of \$8,022.57 and is described in the report as being for "marina stores equipment." This invoice was sent up to Dalite Corporation in the ordinary course, so that the money could

¹Exhibit 3129.²Exhibit 3130.³Exhibit 3131.⁴Exhibit 3132.⁵Exhibit 3133.⁶Exhibit 3134.

be included in the payments made by Commodore Sales Acceptance, in a report dated April 27, 1964,⁷ showing invoice No. 642 in the same amount as shown on the cheque report of April 21.

This was not the first time that payments of this kind had been made for work done on Aquila III. There are documents relating to the year 1962, showing that the yacht had been enlarged by adding six feet to its hull, and two diesel engines installed for which payment was made by Dalite Corporation. This was the rebuilding done by Master Welding Limited which supplied the Commission with a copy of an invoice number 5510, dated February 28, 1962, sent to Dalite Corporation⁸ in the amount of \$1,831. This relates to a shop order from the same company dated January 24, 1962, headed "Dalite Corp.", addressed to 300 Dwight Avenue, New Toronto, and authorized by "Gene Last."⁹ The shop order begins, "rework—cabin cruiser at No. 17 Pier in Toronto", and goes on to give details of the work to be done, but there are two handwritten memoranda related to it,¹⁰ the first on paper headed "Master Welding Limited", reading:

"Dalite Corp—work on Cabin Cruiser	
Material	251.36
Labor	1,579.75"

giving a total of \$1,831.11. The second, on plain paper, reads "Invoice as—supply materials, fabricate and assemble steel jigs for pre-fab houses as per Dwgs. and instructions by Dalite Corp. They will issue licence to cover taxes. In 5510. Authorized by Gene Last". The particulars of invoice 5510, referred to above, are "supply material, fabricate and assemble steel jigs as per dwgs. & insts." The amount billed is \$1,831 exactly, not including the 11¢. In the purchase journal of Dalite Corporation for February 1962 there was recorded on February 28 an amount payable to Master Welding Company of \$1,831, charged to "prefabricating expenses, domestic."¹¹ The accountants for the company in the year in which this transaction took place were Walton, Wagman & Co., and in their audit file¹² is a schedule entitled "Dalite Corporation (Canada) Limited—Schedule of Moving Costs and Re-Equipment July 31, 1962". This refers to an account from Master Welding Limited for "steel jigs" in the amount of \$1,831.¹³

The certificate of registration for Aquila III contains the information that in 1962 two turbo-charged diesel engines, manufactured by Caterpillar Tractor Company of Peoria, Illinois, were installed in

⁷Exhibit 3135.

⁸Exhibit 3136.

⁹Exhibit 3137.

¹⁰Exhibit 3138.

¹¹Exhibit 3139.

¹²Exhibit 1716.

¹³Exhibit 1716.1.

the vessel. These were supplied by George W. Crothers Limited of Toronto, and this company furnished the Commission with a photostatic copy of an invoice addressed to Dalite Corporation,¹⁴ dated April 3, 1962, charging it for "one complete power package as per your P.O. 1914", at a cost of \$7,980 and adding \$239.40 for Ontario retail sales tax. On the face of this invoice are the words "Ship to Aquila III Pier 17 Marine Terminal Toronto." Payment for this is recorded in the Dalite Corporation purchase journal as number 37 for April 19, 1962 in the amount of \$7,980 by George W. Crothers Limited and charged to "prefabricating expense domestic—D.N.A."¹⁵ No sales tax payable to either Canada or Ontario is recorded as having been paid, because this expense was made attributable to a Department of Northern Affairs contract, and on the original invoice of the Crothers firm is the legend "S.T.N.I. see corrected copy", which may reasonably be translated as "sales tax not included." The Department of Northern Affairs contract was by fixed price, so that Dalite Corporation evidently assumed the additional expense of these engines, and there is no suggestion that the Department unwittingly paid for them.

The earlier history of this vessel, during a period admittedly prior to the date when Commodore Sales Acceptance was supplying Atlantic money for its embellishment, is illustrated by an original builder's certificate under the Canada Shipping Act, made by Raymond Goodreau and dated January 1959, without specifying the day of the month.¹⁶ The owner is described as "Elsie Last, 44 Cumberland Drive, Port Credit, Ontario (married woman)." The audit papers of Glick & Levine¹⁷ contain a photostatic copy of an invoice from Raymond Goodreau Steel Boats and Fishermen Supplies, dated December 18, 1958 and directed to Dalite Furniture & Store Fixtures Company Limited, for an amount of \$1,900, the detail being given as "to reline steel and stainless steel tanks—for plating."¹⁸ The invoice is stamped "paid prices O.K.", initialled "E.L." in Last's familiar handwriting and annotated "Mach Rep" in the same hand. An account with Raymond Goodreau appears in the Dalite Corporation accounts payable ledger containing two entries, one from the purchase journal and one in the disbursement journal, indicating payment of \$1,900 on December 18, 1958. The purchase journal discloses that this payment was set up and charged to "Machinery Repairs Expense." The audit papers of Glick & Levine again provide a photostatic copy of an invoice from Boyce Boiler Company to "Dalite Furniture Company Limited", dated October 30, 1958, in the amount of \$253.38.¹⁹ On the invoice the charge is said to be for "Crane loading

¹⁴Exhibit 3141.

¹⁵Exhibit 3142.

¹⁶Exhibit 3143.

¹⁷Exhibit 2922.

¹⁸Exhibit 2922.1.

¹⁹Exhibit 2922.2.

tank on float, delivery and unloading.” The word “tank” on the invoice has been typed at a different angle from the other words in the line. This invoice is similarly stamped as to approval of quantities and prices, initialled “E.L” and marked “Mach Rep.” A Commission investigator attended at the premises of Boyce Boiler & Machinery Company in Toronto, and obtained the company’s copy of the invoice, with a work order and purchase order attached,²⁰ dated October 30, 1958, for the same amount of money; on this the description reads, “Crane loading boat on float, delivery and unloading.” The company work order refers to the pick-up point as being Pier 14 “Jarvis slip”, and to loading a boat, and is endorsed “for delivery, —V. Last”. The purchase order dated October 24, 1958 is from Dalite Corporation to Boyce Heavy Machinery Movers, is signed “E. Last” and gives instructions to move “Manana III” from Pier 15 to 300 Dwight Avenue. Documents from the Registry of Shipping relating to Manana III²¹ show that it was owned by Arnold C. Burke and was acquired by E. Last in October 1958. This was a 40-foot yacht the hull of which had been damaged in launching operations at the Royal Canadian Yacht Club, and it would appear from subsequent inquiries by the Commission’s investigators that it was bought by Last and “cannibalized” in the Dalite plant, the fittings being transferred to the new hull built by Raymond Goodreau for Aquila III. The files of Glick & Levine for the year ended July 31, 1960 again provide a schedule entitled “Dalite Furniture & Store Fixtures Company Limited—sundry memos for year ended July 31, 1960”.²² This notes four payments; two to Burke for \$8,000 and \$4,252.32, one in October 1958 to “Boyce Boiler” of \$253.38 and one to Raymond Goodreau in December 1958 for \$1,900. Opposite these notes appear the abbreviations “Pl. and Equip.” The amount shown as paid to Goodreau agrees with what was paid for the construction by him of the hull, and the Boyce Boiler item agrees with the amount billed to move Manana III from Toronto Harbour to 300 Dwight Avenue. The general journal of Dalite for July 1960²³ shows that on July 31 the plant and equipment account was charged with \$12,252.32 for machinery repairs and the expense account was relieved of the same amount. The reference here to plant and equipment repairs indicates that they were made by Burke Electric & X-Ray Company Limited and the audit working papers state that they were “oven repairs.” The payments to Rybovich, Crothers, Master Welding, Goodreau, Boyce and Burke amount to \$31,514, and subsequent investigation shows that there is little doubt that a good deal more was spent at the expense of Dalite Corporation in that company’s premises on work done to Aquila III.

²⁰Exhibit 3147.

²¹Exhibit 3148.

²²Exhibit 2923.10.

²³Exhibit 3150.

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Eugene Last would not be the first manufacturer to maintain a boat of this type in his company's name and at its expense, but there is no evidence that Aquila III was ever considered to be the property of either Dalite Corporation or Daylite of Grand Bahama. In fact there is evidence indicating that Last treated payments made for insurance and repairs as personal expense items at other times. He was, as might be expected, closely examined by Mr. Shepherd about Aquila III, when all the documents were put to him. His explanation of the Rybovich invoices was that Allen Manus sent his own captain to Toronto to take Last's boat to the Bahamas, and when it arrived gave instructions to Rybovich to make the alterations which he, Last, had in no way commissioned, and indeed expressly repudiated.²⁴

Q. Then do I understand you to say that Mr. Manus, without any authority or discussion with you of any kind, put this yacht into Rybovich and gave them instructions to do extensive changes and repairs to it?

A. That is correct.

Q. That was an extremely unusual thing for him to do, wasn't it?

A. Not only that, but he represented to Mr. Rybovich that he owned the boat.

Q. Now, why did he do that?

A. I don't know. Really, I don't know, but I understood—

Q. You must have asked him, though. It would be the obvious question when you found your yacht in there with a great deal of work being done to it, somebody else having told them to do it.

A. If you had been there you would have heard me screaming to Rybovich and him when I got back. Mr. Saunders was present with me at the time when it happened.

Q. What did Mr. Manus say as to what moved him to do anything so unusual?

A. Do you know him? Do you know Mr. Manus personally?

Q. No.

THE COMMISSIONER: Just answer the questions, please, Mr. Last.

THE WITNESS: He had his boat built by Rybovich, and he is the type of a guy that wants to show off, a big operator.

MR. SHEPHERD: Do you say, then, that he, without your knowledge, took your boat to Rybovich, told Rybovich that he owned the boat, and told him to carry out extensive renovations on it, all of this being done without your knowledge?

A. Exactly.

²⁴Evidence Volume 65, pp. 8870-3.

Q. Then the job, when ultimately completed, resulted in a bill, and that bill was sent to you; is that correct?

A. Right.

Q. The first bill?

A. Yes.

Q. It was sent to you?

A. Yes.

Q. And so far as Rybovich was concerned, you owed Rybovich, and so far as you were concerned, Manus owed you?

A. Yes.

Q. Is that the position?

A. Right.

Q. So that what you did under those circumstances was to obtain an invoice stating that this was "Hardware for docks" and have that invoice paid with money derived from Commodore Sales Acceptance, through Dalite (Canada)?

A. Yes.

Q. Now, is that the next step?

A. Yes, that is right.

Q. Then you hoped and believed that when the Lucayan Beach Hotel had completed its contract with Daylite (Grand Bahama) through the subsidiary, Lucayan Village, you would have been able to charge this in as an extra?

A. Yes.

Q. And the money would be recovered in that manner?

A. Right.

Q. Is that the explanation?

A. Right.

Q. That is to say, Lucayan Beach Hotel would pay for it instead of Mr. Manus?

A. That is what he instructed me to do.

Q. And what you agreed to do?

A. Right.

Q. But immediately the position was that you got an invoice which you owed, you went back to Rybovich, got him to change the invoice and charge it to Daylite (Grand Bahama). Is that correct?

A. Right."

When Rybovich was interviewed in West Palm Beach by Mr. Cartwright he remembered the incident perfectly, and said that Last at no time

expressed any concern about Manus having been given instructions to repair his boat. Subsequently, and as further explanation of the rôle played by Manus in this transaction, Last offered an invoice from the Kelly Tractor Company addressed to "Alan Manus M/V Aquila West Palm Beach Florida for repairing the raw water pump and installing new hoses." The amount of the bill was \$223.79 and it was paid by Last on May 20, 1964.²⁵ The point which Last wished to make, in connection with this invoice, was that it corroborated his assertion that Manus represented himself as owner of Aquila III and had incurred expenses without authority. The vessel was at the time under the control of Manus's professional captain when the real owner was evidently in Toronto; so that there is nothing remarkable about the bill being sent to the man whose employee had ordered the work to be done. James E. Maher has stated that he accompanied Last and Manus to the Rybovich works to inspect it, and that at that time it was planned to use it in the service of the Lucayan Beach Hotel Company. If this were the real intention it was not testified to by Last, and does not explain or justify the work being charged to the marina project.

As to the previous history of Aquila III and the purchases made from Crothers, Boyce, Master Welding, Goodreau and Burke, Last's explanation was that Dalite Corporation at all times owed him considerable sums, that these charges should have been made against his personal account and that the person responsible for charging them to the company in error was W. R. Miller. Miller's resignation as general manager of Dalite in 1962 has already been noticed. Last suggested that Miller was earlier an employee of Commodore Sales Acceptance who had been installed in the Dalite organization by that company. Miller was indeed hired as general manager of Dalite Corporation, at the instance of C. P. Morgan in April, 1962, and resigned in September. Since he resigned on a question of principle, involving at least the proper ownership of Dalite Corporation (Manitoba) Limited, it is inconceivable that he would be a party to charging to the company personal expenses of Last laid out on a boat owned by Mrs. Last, or would have done so in error, and this statement must be considered reckless and untrue. Last's evidence as to the altered Boyce Boiler & Machinery Company invoice for moving Aquila III to the company's plant was as follows, and is typical of his attitude to questioning on the whole subject.²⁶

"Q. I show you an exhibit, Exhibit 2922.2. This is a photocopy of an invoice found in the files of the accountants Glick & Levine. It is from Boyce Boiler & Machinery Company Limited to Dalite Furniture Company Limited, dated the 30th October, 1958, reading: 'Crane loading tank on float, delivery & unloading,' followed by some particulars,

²⁵Exhibit 3210.

²⁶Evidence Volume 65, pp. 8875-80.

'\$253.38,' below which is written, 'Mach' and a different word, 'Rep,' and then what I take to be your initials. Those are your initials, are they not?

A. They are.

Q. Now, this invoice was charged to 'Machinery repairs.'

A. One moment. (Cheque produced by witness).

Q. Let me re-assure you on one point, Mr. Last. There were other payments to Boyce Boiler & Machinery Company Limited by you. It is this payment here that I am concerned about.

A. Yes.

Q. How did that come to get charged to 'Machinery repairs'?

A. It's way back in 1958.

Q. The original document from the hands of Boyce, Exhibit 3147, is an exact copy of that invoice, except that it reads, 'Crane loading boat on float.' Do you see that?

A. Yes.

Q. And the instructions which are attached and which are signed by you say: 'This order is your instructions to move Manana III from Pier 15 to 300 Dwight Avenue.' Is that correct?

A. Right.

Q. Do you recall the circumstances? You told Boyce to take two cranes and pick up the 'Manana III' and deliver it to 300 Dwight Avenue. You recall that, do you not?

A. I think I did, but I couldn't recall that far back, 1958.

Q. Can you offer any explanation as to how Dalite came to pay the invoice of Boyce Boiler & Machinery, when the word 'boat' has been erased and the word 'tank' has been substituted for it?

A. I couldn't tell you.

Q. Did you do that?

A. No.

Q. Was it done on your instructions?

A. Not to my knowledge.

Q. Why did you direct, as appears on the face of the invoice, that that invoice be charged to 'machinery and repairs'?

A. I didn't. I don't recall.

Q. Have you had an opportunity to offer whatever explanation you wish to offer respecting that?

A. No."

It is to be hoped that Eugene Last will be given another opportunity of giving an explanation of these transactions in the courts, because

they indicate to me that he was dishonest, and provide an explanation of why attempts to control Dalite expenditures both in Canada and the Bahamas were frustrated by his calculated hostility. At the time of the Atlantic collapse Aquila III was moored at the marina in Bell Channel Bay and Mr. J. L. Biddell, liquidator of Daylite of Grand Bahama and receiver of Dalite Corporation, took possession of it, asserting ownership on behalf of Daylite of Grand Bahama. Before he could sell it two unidentified persons, displaying a certificate of ownership in the name of Mrs. E. Last, removed it and sailed it to Florida, where it was apparently sold, Mrs. Last receiving some \$6,000 of the proceeds.

The International Aviation Club

The one Grand Bahama project undertaken by Daylite of Grand Bahama, shown on Table 49 and not previously described, was the projected construction of an "International Aviation Club". An agreement, dated October 6, 1964, between the Grand Bahama Development Company and Daylite of Grand Bahama¹ provided for the purchase of a tract of land immediately west of the Lucayan Beach Hotel, lying between it and what is now the Holiday Inn, and containing 7.2 acres, for \$528,560 in U.S. funds, or a price of approximately \$73,400 an acre. The contract required delivery of a cheque in the sum of \$232,140 on October 6, 1964 as a deposit, with the balance due on April 6, 1965 at which time Daylite of Grand Bahama was to receive title to the property. Provision was also made for the deposit cheque to be post-dated to January 6, 1965, and this was actually paid by a cheque dated January 13, 1965 in the amount of \$249,477.96 in Canadian funds, made payable to the Canadian Imperial Bank of Commerce by Dalite Corporation.² The total deposit made to the Daylite of Grand Bahama account with the Royal Bank in Freeport on January 20 was \$252,000 in Canadian funds, and this money, from which the deposit cheque was derived, came, like all the rest, from Commodore Sales Acceptance. Daylite of Grand Bahama was authorized by a "license agreement" between it and the Grand Bahama Port Authority, also dated October 6, 1964, to carry on the business of soliciting members for and operating an "aviation club."³ Proof that C. P. Morgan was aware of the proposal to erect the club is provided by an original letter, dated August 26, 1964, from him to Jules R. Timmins, Jr.⁴ dealing with a plan to raise \$14,000,000 in U.S. funds and mortgaging various properties described as "Lucayan Beach Enterprises." It should be said here that Jules R. Timmins, Jr. was a young man bearing a well-known name in financial circles, but not associated with his father or having access to the sources

¹Exhibit 3151.

²Exhibit 3152.

³Exhibit 3154.

⁴Exhibit 3155.

of his father's many industrial interests. Without putting too fine a point on it, it was well known in the business community that young Mr. Timmins's principal, and perhaps only asset was his name. It is unlikely that Morgan did not know this, but he seems to have been content to make as much use of that name as he could, and certainly more than the circumstances warranted. The letter is as follows and is typed on the notepaper of the executive office at 100 Adelaide Street West:⁵

"August 26th, 1964

Jules R. Timmins, Jr.,
11940 L'Acadie Blvd.,
Montreal 12, P.Q.

Dear Mr. Timmins:

Re: Lucayan Beach Hotel Company
Limited, Grand Bahama Island
\$14 million (U.S.)

As a result of conversations held in Toronto on the 20th August, 1964, Mr. James E. Thomson representing you and further as a result of previous conversations between Mr. Eugene Last and Mr. Thomson, who at these various meetings were advised by your solicitor, Ross Tolmie, Esq., Q.C., and John H. McDonald, Esq., Q.C., representing DALITE, I wish to advise you that I and my Associate, Mr. Eugene Last are prepared to discuss obtaining through you a mortgage in the amount of \$14 million (U.S.) (more or less) which will be secured by various Lucayan Beach enterprises as set forth hereunder and conditional upon this mortgage being arranged we will embark upon a joint venture subject to the conditions set forth hereunder:—

1. It is understood that the original conversations between you and Mr. Eugene Last had contemplated using a Company to be incorporated to handle this proposed business undertaking; however, it is my suggestion that The Lucayan Beach Hotel Company Limited be used as the vehicle for this purpose.
2. I hereby warrant that I have effective beneficial control of The Lucayan Beach Hotel Company Limited to the extent of at least 51% of the voting stock thereof until September 15th, 1964.
3. As soon as the contemplated mortgage hereinabove referred to has been arranged by or through your group on or before September 15th, 1964, I hereby covenant to contribute and deliver free and clear 51% of the total capital stock of The Lucayan Beach Hotel Company Limited presently outstanding and I further covenant that this will represent all stock holdings which I, or my nominees, will hold as of the date of the arranging of the mortgage, to a Bahamian Holding Company to be incorporated and owned jointly and equally by the Groups referred to herein (i.e. the Timmins Group and the Morgan Group).

⁵Exhibit 3155.

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4. Furthermore I will provide an evaluation as of June 30th, 1964 on the properties referred to in this letter both as to current capital values and also income values of the total complex exclusive of the Aviation Club.
5. It is further understood that I will covenant that if the aforesaid mortgage in the amount of \$14 million (U.S.) (more or less) at a rate not in excess of 7% is made available by or through you (and that if the transaction is arranged to close within 90 days or thereabouts of 15th September, 1964), I will provide or arrange the short term financing necessary to ensure that effective control of The Lucayan Beach Hotel Company Limited be transferred forthwith to the proposed Bahamian Holding Company.
6. I furthermore covenant that the following subsidiaries of The Lucayan Beach Hotel Company Limited and the adjacent properties required for the proposed Aviation Club and Yacht Club will be included in the overall complex which consists of the following:—
 - (i) The Lucayan Beach Hotel
 - (ii) The Lucayan Village Company Limited
 - (iii) The Lucaya Marina Company Ltd.
 - (iv) 110 Efficiency Units of rented apartments
 - (v) 40 one and two bedroom units
 - (vi) All the facilities in connection therewith
7. In connection with the foregoing, I am prepared to give you a detailed summary of the disposition of the total sum of such mortgage as may be arranged by or through you.
8. It is further understood that you on your part will covenant to provide for the membership of the Aviation Club pursuant to a letter signed by you addressed to Mr. Eugene Last dated August 17th, 1964.
9. It is further understood that should the mortgage be arranged all reasonable expenses in connection with the foregoing shall be borne by The Lucayan Beach Hotel Company Limited and that if the principals advancing the mortgage funds require reasonable participation that such participation and/or fees or other costs shall also be borne by The Lucayan Beach Hotel Company Limited.
10. Pursuant to previous discussions between yourself and Mr. Eugene Last, I concur in your wish to have Price Waterhouse & Co., Chartered Accountants, appointed as Auditors, providing, however, that I may have the right to appoint the Comptroller of The Lucayan Beach Hotel Company Limited.
11. I shall be pleased to supply such documentation as you may require and have tentatively arranged to leave for London with Mr. James Thomson and yourself on or about the 28th August, 1964 for the purpose of finalizing this matter during the following week before your principals leave England on the 4th September as indicated by Mr. Thomson.

12. This commitment expires September 15th, 1964 unless renewed by me in writing.

Yours faithfully,
 'C. Powell Morgan' "

Two things will be noted here; the first is Morgan's knowledge of the aviation club plan as early as August 1964, and the second his warranty of effective beneficial control of the Lucayan Beach Hotel Company, whereas all the evidence available to the Commission indicates that in September 1964 he and his associates controlled only 35% of the common stock. A company was incorporated under the name of Aviation Country Club Limited⁶ and the directors after incorporation were Jules R. Timmins, Jr., James E. Thomson and Eugene Last.⁷ The letter mentioned by Morgan as being from Timmins to Last was dated August 17⁸ and referred to an undertaking of Timmins to furnish a feasibility study for the club which was actually prepared by Weir, Duncan & Co., chartered accountants in Montreal. A copy was furnished to the Commission by Timmins,⁹ and the study forecast that twelve months after the venture began it would generate cash in the amount of \$630,000, either from operations or from loans on capitalization. On the other side of the picture there was found a document in the files of Duncan Hopper & Associates, estimating the costs of a project entitled "Aircraft Owners and Pilots Club", also referred to as Inter Avia Limited.¹⁰ The latter name was not ultimately used, so this document would appear to have been prepared prior to the end of August; in it the total cost of construction was estimated at \$5,050,000. Found with it was an unbound brochure containing plans and sketches of the proposed Aviation Club, or "Club 370—A Point Beyond the Compass Circle", and the pretentious building there illustrated was to face the sea in a half ellipse, with a large swimming pool and other refinements.¹¹

The proposal to build an additional structure at such a cost, with no other financing in view except the over-strained and deeply compromised resources of Atlantic Acceptance, makes one wonder if C. P. Morgan was not, even as early as the summer of 1964, losing his grip on reality. Even more astonishing is that the plan to raise \$14,000,000 by way of mortgage negotiated in London was actually attempted. Timmins and Thomson went to London for five days in August and amassed a bill of £361.7.10 at the Dorchester Hotel. According to Thomson, who was examined with Timmins under the Securities Act,¹² they were met there by Morgan, but no record of his expenses has been found. The

⁶Exhibit 3156.

⁷Exhibit 3157.

⁸Exhibit 3158.

⁹Exhibit 3159.

¹⁰Exhibit 3160.

¹¹Exhibit 3161.

¹²Exhibits 3708-9 and 3711.

rate for rooms at the Dorchester Hotel ¹³ was 18 guineas a day and the whole amount was eventually paid by Dalite Corporation in March 1965, after the manager of the hotel had written unavailingly to Timmins in Montreal.¹⁴ Timmins testified about his impressive business connections in England and on the Continent, dropping among others the name of Prince Andrew of Yugoslavia. The fecklessness of this junket, even to the hotel bill left unpaid for six months, is characteristic of the promotional activities undertaken on Dalite's behalf by Timmins with the assistance of Thomson and S. J. Hogg, the last being particularly active in the promotion of fresh enterprises in Nassau and in the West Indies. Thomson, on his own showing, had led a hand-to-mouth existence since the war, and the apparent willingness of C. P. Morgan to consider seriously the most elaborate proposals must have looked good to him indeed. Hogg was a practical engineer without professional qualifications, but shared with Eugene Last the distinction of being a "Doctor of Humanities" from Philathea, though he did not aspire to commissioned rank in the Maltese army.

In October 1964 a lavish promotional entertainment was conducted at the Diplomat Hotel in Hollywood-by-the-Sea, Florida, where the Aircraft Owners and Pilots Association were convened, to arouse interest among owners of light aircraft for which the island of Grand Bahama provided the most accessible oversea destination. On this occasion half-a-dozen models were recruited from an agency in Coral Gables to act as "hostesses". The result was more fruitless billing of Timmins and no record of how payment was made. Timmins testified that the idea of an aviation club originated in a discussion between himself and James E. Maher in October 1963 (denied, incidentally, by Maher), that he subsequently attended a convention of the Aircraft Owners and Pilots Association in Houston, Texas, where he met a man called Frisch and settled on an amount of \$47,500 as being necessary to "reach the members of the organization." Thereafter he had visited Germany in an attempt to raise money there and dealt with a "contact man" by the name of Romberg. The scheme languished until June of 1964, when he was told by Thomson that his firm, presumably Dalite Corporation, had \$900,000 available to finance the project. A meeting with Thomson occurred in Montreal at a large house and under circumstances which Thomson found, as stated in his testimony, most impressive. Thomson then introduced Timmins to Last, and thereafter Timmins and Last, according to the former, engaged in discussions about their dividing between them on an equal basis the stock of a company called Timmins Trust Company Limited, incorporated in the Bahamas, which would in turn hold a controlling interest in Daylite of Grand Bahama. For his interest in Timmins

¹³Exhibit 3164.

¹⁴Exhibit 3165.

Trust, Last was to pay Timmins \$50,000. In the upshot Last provided Timmins with \$5,000 of Daylite of Grand Bahama funds and the two parted company in March, 1965, when Thomson and Hogg went over to London to exploit further what Timmins regarded as his own connections in the financial community there.

The comic aspect of all these comings and goings and building of castles in the air is overshadowed by the fact that Dalite Corporation billed Daylite of Grand Bahama in the amount of \$77,000 for the promotional expense involved. An example of these charges is a document found in the records of Dalite Corporation, recording payments in the amount of \$10,449.89 made to Eugene Last in December 1964. It is a regular expense summary with invoices and vouchers attached.¹⁵ Most of the expense items are attributable to the Aviation Club, including \$1,414.71 to Frisch of the Aircraft Owners and Pilots Association for expenses in Freeport and consulting fees. Hotel charges amounted to \$3,520.85, the largest bill being at the International Airport Hotel in Miami for \$1,748.80. None of Last's travelling expenses appear to be an item of this invoice, but according to an expense account submitted in December 1964, covering a period from September 15 to December 17, these amounted to \$9,106.01 in Canadian funds, including charges for almost daily travel between Nassau and Freeport, in spite of the fact that the Lucayan Beach Hotel was in operation and Daylite of Grand Bahama had built apartments and other accommodation which were available for use by its officers. For the calendar year 1964 a conservative estimate of Last's travelling expenses, paid by Dalite Corporation with Atlantic money, is \$38,000.

Throughout the period from the early autumn of 1964 to the spring of 1965 Dalite Corporation was also engaged in an intensive lobby, conducted by Thomson, to change the provisions of the Export Credits Insurance Act, with a view to securing Canadian government guarantees of long-term financing of prefabricated housing contracts abroad, an enterprise which relied largely on the services of Ross W. Tolmie, Q.C. and John H. McDonald, Q.C. of Ottawa, both of whom are mentioned in Morgan's letter to Timmins. It also included the issuing of invitations through them to the Prime Minister, the Minister of Trade and Commerce, and the Minister of Transport to attend the ceremonial opening of the Aviation Club, which did not exist, and the motel-marina complex in early January of 1965. Mr. Pearson and Mr. Sharp gracefully declined, but Mr. Pickersgill, accompanied by Mr. Tolmie, apparently did attend and stay at the Lucayan Beach Hotel. At this time Mr. Pickersgill, as Minister of Transport, was being asked by Dalite's representatives to support the provision of scheduled flights to and from Freeport by Air Canada, a Crown corporation, so that his appearance, according

¹⁵Exhibit 3166.

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to Thomson's correspondence with McDonald which Thomson furnished to the Commission, was regarded as particularly advantageous.

As it turned out, not surprisingly in view of the projected costs, the Aviation Club was never built. The project, to which the number 221 was assigned, was being closely watched in Toronto, as indicated by a memorandum of October 26, 1964 from Woolfrey to Cockburn saying: "It is important that C. P. Morgan is informed when any expenditures are made on No. 221. He has not authorized any to date." Months later, on April 6, 1965, Commodore Sales Acceptance advanced the balance of the purchase price of the land in the amount of \$296,420 in U.S. funds by way of a loan to Dalite Corporation, and this money was sent by draft from the Canadian Imperial Bank of Commerce direct to the Royal Bank of Canada in Freeport, with instructions to the manager to hold it for the account of the Grand Bahama Development Company, "pending receipt of a clear title in favour of Daylite of Grand Bahama." Daylite of Grand Bahama never received a conveyance, and the amount of this deposit was eventually returned to Commodore Sales Acceptance after it went into receivership.

San Jose Construction (Bahamas) Limited

In the meantime there was a characteristic intervention by Eugene Last who caused to be incorporated by Peter D. Graham a company called San Jose Construction (Bahamas) Limited in September 1964. The first shareholders and directors were Eugene Last, Julian O'Reilly and Bernard Thompson, and were elected president, vice-president and secretary respectively. When asked to explain the reason for the existence of this company, Last testified that it was necessary on two grounds: first, because Daylite of Grand Bahama held a licence merely to operate an Aviation Club and not to construct it, and second, one Raymond Tower, an employee of the Development Company, had suggested the incorporation of a new vehicle because of the proliferation of Daylite of Grand Bahama projects. Neither reason is convincing, and it seems that the principal justification for the existence of San Jose Construction in the eyes of Last was the opportunity for himself to make money for which he would not be accountable to C. P. Morgan, who, in spite of Last's statement on oath to the contrary, evidently knew nothing about its operations until they were far advanced.

San Jose Construction entered into an agreement with Daylite of Grand Bahama to excavate the site for the Aviation Club on November 3, 1964.¹ It provided for preparation of the site without cost to Daylite of Grand Bahama, the delivery of top soil and sand by San Jose to complete the landscaping of other Daylite of Grand Bahama projects as required, and the moving of 5,000 cubic yards of sand to the Lucayan

¹Exhibit 3209.

Country Club, owned by the Development Company, for which it was said that it would receive some 30,000 yards of fill material from the Development Company to be placed on the Aviation Club site. In consideration for all this, Daylite of Grand Bahama bound itself to allow San Jose to remove all surplus sand and other material becoming available as a result of the excavation. This agreement was signed by Eugene Last for Daylite of Grand Bahama, and for San Jose by a man called Al Zinno, a contractor from Miami, who was, as Last said, "supposed" to be a director of San Jose, and who had been appointed by Last a vice-president "over the telephone." No doubt the prospect of signing this agreement for both parties occurred to Last as being faintly improper; O'Reilly himself was an officer of both companies; so Zinno was called upon to do the honours for San Jose in an obvious effort to give an "arm's length" appearance to the transaction. The agreement itself was produced by Last when he testified before the Commission and was not found by the liquidator in the records of Daylite of Grand Bahama. A great deal of sand was removed and sold from land which was still owned by the Grand Bahama Development Company, and in the teeth of its directive of November 8, 1963² to all contractors and sub-contractors not to remove sand without authority. Tramiel testified to having seen the ugly hole and bared rock that the removal of sand on this large scale created, apparently much in excess of what was required for the footings of the Aviation Club.

Unaudited financial statements of San Jose Construction for the six-month period ended April 30, 1965³ show income from sand sales of \$103,063.60. Earned surplus for the whole period amounted to \$52,-334.62, of which \$45,411 resulted from the sale of sand after all depreciation and vehicle expense had been charged against sand sales, included in what was described as the "equipment division". The other division of operations was the "construction division" which was to build duplexes, a racquet club and a sea wall, only the last being constructed. The statement also shows a paid-in surplus of \$31,942.44 which Eugene Last said was his own money. He undertook to produce cheques in support of this statement drawn on his account in Nassau. These have not been forthcoming, but there is no reason to doubt that he supplied the money, because, as will be seen, he was in a position to dispose of a much larger sum, which was nevertheless acquired under circumstances making it almost certain that it was not his. Subsequently, and after the collapse of Atlantic, Last transferred 50% of his ownership of San Jose to Julian O'Reilly, who was still operating the company in a small way in Freeport at the time of writing, but at the time of these transactions it effectively belonged to Last and this fact he admitted in his evidence. There was no direct or overt contribution of Atlantic funds to

²Exhibit 3186.

³Exhibit 3183.

San Jose, but since the removal and disposal of the sand in the course of preparing the site of the Aviation Club had expensive consequences for Daylite of Grand Bahama, its operations are pertinent both as a source of loss and as evidence of dishonest dealing on the part of Last.

After the collapse of Atlantic, and specifically on June 29, 1965, when it was clear that the Aviation Club would never be built by Daylite of Grand Bahama, a new agreement was entered into between that company and the Grand Bahama Development Company, cancelling that of October 6, 1964 and providing for payment by Daylite of Grand Bahama to the Development Company of \$100,000 in U.S. funds, the surrender of its licence from the Port Authority to operate the Aviation Club and the sale by it to the Development Company of 30,000 cubic yards of sand and fill, located on Bell Channel Bay and removed from the Aviation Club site, for the sum of £1. This agreement is only intelligible by reference to the affidavit of John Leonard Biddell, to which it is an exhibit, made in connection with proceedings taken in 1966 in the Bahamas to have him ousted as liquidator of Daylite of Grand Bahama at the instance of Duncan Hopper & Associates,⁴ in which it appears that the payment of \$100,000 made to the Development Company was in effect liquidated damages for the removal and sale of sand which could not be recovered. As a further exhibit was the following original agreement in the form of a letter, dated June 28, 1965, from the treasurer of the Development Company to Eugene Last and subscribed to by him.

"An agreement has been reached to cancel a contract entered into on 6th October 1964 whereby the Grand Bahama Development Company, Limited contracted to sell certain properties to Daylite of Grand Bahama Company, Limited for the purpose of building an Aviation Country Club.

Under the agreement to cancel this contract the Grand Bahama Development Company, Limited will return \$132,140.00 of the down payment received on the contract to Daylite of Grand Bahama Company, Limited with the stipulation that any debts or obligations owed to the Grand Bahama Development Company, Limited, any of its subsidiaries or affiliated companies, will first be satisfied from the above amount.

For this purpose the Grand Bahama Development Company, Limited is to establish a specific checking account in its own name with the Royal Bank of Canada, Freeport branch, in the amount of \$132,140. The Development Company will disburse said funds only upon the written direction of Daylite of Grand Bahama authorizing the Development Company to settle the above specific obligations of Daylite.

It is understood that when all of Daylite's obligations to the Development Company, its subsidiaries and affiliated companies, are extinguished to the complete satisfaction of the Development Company any amounts remaining in said fund will then be paid to Daylite of Grand Bahama Company, Limited."

⁴Exhibit 3181.

Thus it was agreed that the deposit paid by Daylite of Grand Bahama to the Development Company, less \$100,000, would be refunded. In fact only \$77,235.77 was actually returned, so that a sum slightly in excess of \$50,000 was evidently retained and disbursed, with the agreement of Last, in respect of debts owing by Daylite of Grand Bahama to the Development Company and its subsidiary and affiliated companies. In an affidavit made in the same proceedings⁵ he pretended, or was made by the draftsman to appear to pretend, not to understand that any payments were due to the Development Company and its subsidiaries, but since the affidavit culminates in the assertion that the real assets of Daylite of Grand Bahama amounted to \$7,000,000, it can only be regarded as a measure of what Last was prepared to tell his solicitors and to subscribe to on oath, and it is not surprising that the action taken to displace Mr. Biddell was unsuccessful. It is of some significance that nowhere in the affidavit does Last contend that \$100,000 was not a fair settlement for the sand removed and sold, and in his evidence before the Commission he justified this by saying that the return of only part of the deposit was a better deal than could otherwise have been obtained from the Development Company. Only Julian O'Reilly, in an unsigned letter identified by Mr. Biddell as having been written by him in response to a letter of his own sent in February 1966, complained about this valuation, and on the ground that the Development Company was claiming unlawful conversion of 200,000 cubic yards of sand, whereas the unaudited financial statement of San Jose only showed sales of 33,000, an ingenuous comment which tends to confirm the Development Company's contention.⁶ Accordingly Daylite of Grand Bahama, and ultimately Atlantic Acceptance, lost \$100,000 of money to which it was otherwise entitled, because its president, Eugene Last, had, in his capacity as proprietor of San Jose Construction, sold for the account of the latter a large quantity of sand taken from land which neither company owned, according to the terms of an agreement which fortuitously came to light only when he gave evidence before the Commission, and which he himself admitted was drawn in the Daylite of Grand Bahama office and not in that of the company's solicitors in Nassau.

C. P. Morgan's recollection of this affair is, as always, expressive and should be quoted.⁷

"A. In the first instance the land was actually never conveyed to Daylite of Grand Bahamas. It was one of those usual Last deals which had a series of conditions to it, which the Grand Bahamas Development Company are in favour of. They usually put a clinker in it that works out to their advantage.

Land was acquired and a deposit was made on it. An arrangement

⁵Exhibit 3187.

⁶Exhibit 3184.

⁷Evidence Volume 26, pp. 3516-9.

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was made with a group from Las Vegas to build the aviation club and all the necessary financial backing to do the thing was apparently available.

However, when the Development Company found out that this was going to be a Las Vegas operation they did not want any part of it. So that went down the drain. Then when the balance of the purchase price was demanded by the Development Company on 24 hour notice, that if it was not paid the original sum would be forfeited, it was put in escrow by myself in the bank in Freeport conditional upon getting a complete title to the land, which did not have any requirement of an aviation club to be built upon it.

This did not suit Mr. Groves at all, so I had to go down to the Bahamas and I sat in with him in his office and he told me the story about the San Jose Construction Company which he claimed Mr. Last had taken the surface sand off this beach property and had destroyed the contour of the beach, and to make matters worse had sold it all over the Island at \$3.50 a yard and had pocketed the money—to this extent, that it had gone into the coffers of the San Jose Construction Company and not into the still owners of the land, which was the Grand Bahamas Development Company.

Q. Who owned the San Jose Construction Company at this point?

A. This is the first time I knew anything about San Jose Construction Company, and it is evidently a company that was incorporated and formed by Mr. Last and his brother and a couple of other working men down there.

In other words, that company was taken, put together and formed out of assets that belonged in essence to Commodore Sales Acceptance.

To make matters even still worse, the money which was tied up in San Jose Construction from the sale of this land, I won't say it has been dissipated but you cannot put your hands on it. But the payment, for getting title to the land, is refused to Commodore and the money is refunded for the land by the Development Company less a hundred thousand dollars. So in essence Commodore got all of their money back except a hundred thousand dollars, and they still should have a hundred thousand dollars coming from San Jose Construction Company because Mr. Groves told me that if it was not paid Mr. Last was going to go to jail because he said he was nothing but a common, ordinary thief and was stealing sand that did not belong to him. Last denied this. He said he had a deal with the fellow at the golf club, that he was to exchange sand for coral, and the coral was to be replaced on the site next to the Hotel.

I asked Mr. Groves, 'Can Commodore get title to this property and let us sell it privately?' He wouldn't do it. Because I could have sold the land for \$750,000 in 15 minutes because it was the most desirable piece of frontage in the whole of the Grand Bahamas.

Q. But the reason you could not get the title was that you were unable within the time limit to build the aviation club?

A. Yes."

Both Last and O'Reilly attributed all this indignation about the sale of sand on the part of Groves and officers of the Development Company to the failure of Daylite of Grand Bahama to secure the erection of the Aviation Club. As Last put it, Groves felt that the image of the island had been spoiled. There is probably an element of truth in this, particularly if Last is correct in his assertion that Groves and his subordinates knew from the start what was going on. But this must remain doubtful, because everything Last testified to in connection with San Jose Construction must be treated with suspicion. There is no record of any sale of sand by San Jose to the Lucayan Country Club and, according to what the Commission was told by James E. Maher, who had severed his connection with the Development Company in November 1964, the golf course was at that time complete and the club would have had no need for 5,000 cubic yards of sand. The circumstances under which the agreement between Daylite of Grand Bahama and San Jose Construction was prepared, executed and subsequently produced, are not reassuring. Nevertheless, it is probably fair to assume that unauthorized disposal of sand, which could not in any event be used for "back-filling" a substantial structure, would have been overlooked if the Aviation Club project had been brought to a successful conclusion.

The space devoted to this episode in the career of Eugene Last might be considered inordinately long if it were not symptomatic of much of what undoubtedly transpired during Atlantic's disastrous venture into the development of Lucayan Beach, and about which no documentary evidence exists or can be obtained. There are other straws which indicate the direction of the wind. During 1964 large sums were paid by cheque to Latham Construction Company Limited, the Bahamian subsidiary of Latham Construction Company of Palm Beach, Florida, which was engaged as a sub-contractor in the construction of the marina and docking facilities in Bell Channel Bay. As a result of conversations between Edgar H. Latham Jr. of that firm and Mr. Cartwright of the Commission, confirmed by a lengthy correspondence between the Commission and Latham's attorneys, and subsequently with Mr. Biddell, it appears that three cheques drawn on the Daylite of Grand Bahama account with the Royal Bank of Canada, made payable to Latham Marine Construction Company Limited and signed by E. Last and Julian O'Reilly, were not received by the payee. The particulars of these cheques are as follows:⁸

<u>Number</u>	<u>Date</u>	<u>Amount</u>
GB 36814	September 5, 1964	£ 8,928.11.5
FP 00731	September 24, 1964	\$35,000.00 U.S.
GB 36860	October 17, 1964	£ 5,357.2.9

⁸Exhibits 5084-6.

The cheques are respectively endorsed, in a shaky and unidentifiable hand, "for deposit only, Latham Marine Construction" on the first two, and "for deposit only" on the third. They were negotiated at the Nassau branch of the Chase Manhattan Bank and were cleared back to the Royal Bank of Canada branch in Freeport. In a letter dated February 23, 1968 Mr. Biddell advised the Commission of discussions which he had had with officers of the Chase Manhattan Bank, and of being shown microfilm records indicating that the proceeds of these cheques had in fact been paid into the account of San Jose Construction Limited, and had been paid out of the San Jose account for the benefit of Eugene Last. It will be appreciated that Mr. Cartwright's investigations and those of Mr. Biddell, to whom the original cheques were given by the Commission, were undertaken on information received after Last had given his evidence and after his departure for Australia in December 1966. The apparent theft of upwards of \$80,000 in Canadian funds suggests an explanation of how Last was able to advance some \$32,000 to San Jose, and it is to be hoped that this further example of peculation by Last will invite the cooperation of the Ontario and Bahamian law enforcement authorities in the near future. The complicity of Julian O'Reilly, now a resident of the Bahama Islands, should not be overlooked.

Daylite of Grand Bahama's Accounts at the Bank of Nova Scotia, Toronto Branch

It has already been seen that a Daylite of Grand Bahama bank account at the main branch of the Bank of Nova Scotia in Toronto had been used to transfer moneys to Frank Kaftel in Europe. There were in fact two accounts, No. 5160 for Canadian and No. 4453 for United States funds. At the time when Mr. Burn and Mr. Wolfman testified no cancelled cheques for either account had been found, but subsequently fourteen cheques, drawn upon No. 5160 for an aggregate amount of \$372,400, were discovered by the Commission's investigators in C. P. Morgan's house and were surrendered voluntarily by his widow.¹ These have already been referred to and their endorsements commented upon in Chapter VIII. They were all made payable to "F. Kulunderino" and all evidently endorsed by the same hand. It has been seen previously that these were payments made to Kaftel as a fee for promoting the sale of shares of Commodore Business Machines and Analogue Controls in Europe, at the time when C. P. Morgan was manipulating the market for their securities. Photostatic copies of ledger cards for both accounts,² with deposit slips,³ were produced. Also in evidence are nine letters sent

¹Exhibits 3841.1-3841.14.

²Exhibit 2860.

³Exhibit 3169.

to Barrett, Goodfellow & Co. and signed by C. P. Morgan, instructing the firm to issue cheques to Daylite of Grand Bahama on his brokerage account,⁴ all in practically identical terms except for the specification of the amounts to be transferred. Generally speaking, withdrawals from the Daylite of Grand Bahama account made by certified cheque took place on the same day as the deposit was made and in the same amount, and out of a total of \$598,290 withdrawals by certified cheque made before the Atlantic collapse, those made on the same day as the deposit and in the same amount total \$428,290. Correspondence of this kind in date and amount occurred on fifteen separate occasions, but there were three exceptions. On June 26, 1964 there was a deposit of \$50,000 against which \$45,000 was withdrawn by certified cheque made payable to F. Kulunderino, this being the first withdrawal by certified cheque revealed by the certified cheque vouchers. On August 17, 1964 \$100,000 was withdrawn against a deposit of \$80,000, and on January 15, 1965 there was a withdrawal by cheque of \$25,000 against the deposit of only \$12,500, which has also been identified with a cheque made payable to F. Kulunderino.⁵ The Bank of Nova Scotia certified cheque vouchers provide a space for inserting either the cheque number or the name of the payee. By matching of the "F. Kulunderino" cheques with the certified cheque vouchers and Morgan's letters of authorization to Barrett, Goodfellow & Co. it is possible to make the following comparison:

*Morgan
Letter
to Barrett
& Co.*

	<i>Amount</i>	<i>No.</i>
1964		
October 14	\$ 35,000	11
October 26	25,000	12
November 5	25,000	13
November 12	25,000	14
November 19	25,000	15
November 27	25,000	16
December 8	25,000	15
		17
1965		18
January 22	25,000	19
January 29	12,500	20
		22
		24
	<u>\$222,500</u>	

F. Kulunderino Cheques

<i>Date</i>	<i>Amount</i>
1964	
June 26	\$ 45,000
October 14	35,000
October 26	25,000
November 5	25,000
November 12	25,000
November 19	25,000
November 27	25,000
December 8	25,000
1965	
January 8	10,000
January 15	25,000
January 22	25,000
January 29	27,500
February 5	12,500
February 12	42,400
	<u>\$372,400</u>

⁴Exhibit 2905.

⁵Exhibit 3841.10.

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The first of these cheques, unnumbered and dated June 26, 1964, for \$45,000 has already been referred to in Chapter VIII as one which Kaftel denied receiving, and as a payment possibly made by or on behalf of Allen Manus. It will also be recalled that, after \$1,200,000 had been paid on July 15, 1964 from the Lucayan Beach Hotel Company's account No. 10001 at British Mortgage & Trust Company to Daylite of Grand Bahama, \$150,000 remained to be paid, in accordance with the altered terms of the agreement between Daylite of Grand Bahama and the Lucayan Village Company,⁶ for the motel on Hong Kong Island. Price, Waterhouse & Co. in the Bahamas supplied the Commission with a photostatic copy of a cancelled cheque dated July 13, 1964, drawn on this account by the Hotel Company and in favour of Daylite of Grand Bahama, in the amount of \$100,000 U.S. funds. Attached to it is a requisition on the Bank of Montreal for the purchase of a draft in that amount, converted into Canadian funds at \$108,218.75.⁷ The particulars endorsed upon the cheque are "re account to purchase 150 units" which refers to the motel, and the ledger cards for the Bank of Nova Scotia account No. 5160 show that a deposit in the amount of \$108,218.75 was actually made. A further \$50,000 in U.S. funds was either still owing or had previously been paid. There is no single payment approximating this amount deposited in the Daylite of Grand Bahama accounts, other than the \$50,000 deposited in the Canadian funds account at the Bank of Nova Scotia on June 26 out of which \$45,000 was paid to Kaftel. Here is one example, at least, of a payment made to Kaftel of moneys belonging to Daylite of Grand Bahama, and not simply derived from Morgan's brokerage account. If it is true that Allen Manus had issued a valueless cheque to Kaftel and that the indebtedness was made good by Morgan, there are grounds for believing that it was done at the expense of Daylite of Grand Bahama and ultimately at the expense of Atlantic Acceptance.

The remaining withdrawals by certified cheque from the Canadian funds account, identified from the certified cheque vouchers, were as follows:

<u>Cheque No.</u>	<u>Date</u>	<u>Amount</u>
	1964	
3	July 15	\$ 50,000.00
9	August 4	60,000.00
10	August 17	100,000.00
	1965	
25	February 19	15,890.00
F. Cockburn in Trust	July 6	6,222.18
	Total	<u>\$232,112.18</u>

⁶Exhibit 2622 (v).

⁷Exhibit 3170.

The last, made payable to F. Cockburn in trust, closed out the account after Atlantic had gone into receivership. None of the cancelled cheques, other than those payable to Kaftel, have been found, although the Bank of Nova Scotia's documents relating to the Daylite of Grand Bahama accounts contain an "authority to mail vouchers", dated January 28, 1964 and signed by E. Last, authorizing the bank to send him statements of account, cheques and debit vouchers to 75 Brown's Line, Toronto 14, the address of the Dalite Corporation.⁸ Last said in evidence that in spite of this direction he never saw either statements or cheques, and maintained that these documents were turned over to Frank Cockburn in the Commodore Sales Acceptance office and were afterwards kept in sealed boxes at 75 Brown's Line. He further suggested that Harry Wagman should have had the cancelled cheques for the Bank of Nova Scotia accounts. He denied ever having heard the name Kulunderino and said that Morgan had asked him and Wagman to sign several cheques in blank and leave them with him, which is probably true. But there is ample reason to believe that a great many documents stored in the Dalite Corporation premises were destroyed by Last, or under his direction, in the summer of 1965.

One of the transactions among the many investigated in connection with the Daylite of Grand Bahama accounts at the Bank of Nova Scotia should be referred to. On July 20, 1964 a deposit was made in account No. 5160 of \$108,000, the deposit slip showing two amounts of \$50,000 with the notation "Comm". This was a payment of \$100,000 in U.S. funds for which British Mortgage & Trust had purchased drafts on the Canadian Imperial Bank of Commerce, charging the amount to the account of the Lucayan Beach Hotel Company. An examination of the ledger card of the Hotel Company's account No. 1001 at British Mortgage shows a withdrawal sufficient to purchase three drafts, each for \$50,000 in U.S. funds, or a total of \$162,203.12 in Canadian funds, as indicated by a photostatic copy of the three drafts supplied by Price, Waterhouse & Co.⁹ According to a letter written to Eugene Last by D. J. Copperthwaite of Price, Waterhouse & Co.'s Freeport office on December 23, 1964, the books of the Hotel Company showed \$150,000 in U.S. funds as having been advanced to Daylite of Grand Bahama, although a description of this transfer as a repayment might have been more in order. Daylite of Grand Bahama, however, only received two of the \$50,000 payments, although the third draft is also payable to the Bank of Nova Scotia and again in the amount of \$50,000 U.S. funds. At the time when Mr. Wolfman gave his evidence it was merely known that the third draft had been negotiated in New York, but subsequent inquiries produced a photostatic copy of a cheque for \$50,000 from the Lucayan Beach Hotel Company, signed by Allen Manus and payable to

⁸Exhibit 2918.

⁹Exhibit 3172.

Peter D. Graham. The accountants also forwarded photostatic copies of statements of account sent by Graham to the Hotel Company for services rendered in connection with the purchase of the Hotel property, and the giving of a mortgage back to the Grand Bahama Development Company for a total of \$121,687.04, converted from sterling to U.S. dollars. This statement shows \$50,000 as having been paid on account on June 29, 1964. It is not clear why the Hotel Company should have shown the whole \$150,000 as having been paid to Daylite of Grand Bahama, or why the money payable to Graham was paid to the Bank of Nova Scotia and negotiated in New York, unless this was the means whereby an additional \$50,000 was credited to the Hotel Company at the expense of Atlantic Acceptance. Graham was also the solicitor for Daylite of Grand Bahama, but the payment to him was evidently made by and on behalf of the Hotel Company. According to James E. Maher, the balance of Graham's account was paid by the Grand Bahama Development Company which was represented by Sir Stafford Sands, and he said that this was necessary because Graham was merely a straw man set up by Sands to act on the other side of various transactions and give the appearance of independence. Maher added to this statement his opinion that the very large fees charged by Graham were shared with Sands. It is only proper to say that there has been no opportunity to test the accuracy of this statement, but the appearance of Graham as solicitor for both the Lucayan Beach Hotel Company and Daylite of Grand Bahama, the interests of which were bound to conflict, shows a complete disregard of the accepted canons of professional conduct. As Morgan said, "our solicitors would not go against the Grand Bahama Development Company."

Morgan and Last Attempt a Final Settlement

By the spring of 1965, and in the face of the huge debt which had been created, both Morgan and Last, for somewhat different reasons, were anxious to part company. From Morgan's point of view there was no possibility of settling accounts with Dalite Corporation without a successful financing of the Lucayan Beach Hotel Company, and he continued to seek a solution by way of mortgage, relying, as he said, upon Weinrott, while lending an ear to Allen Manus's schemes for the marketing abroad of 10,000,000 £1 shares. Last was determined to rid his company of the burden of its debt to Commodore Sales Acceptance and to get some cash in the process. He described in evidence a scheme for Hugo Oppenheim und Sohn to make a second appearance on the stage, take over the assets of Daylite of Grand Bahama and relieve Dalite Corporation and Last himself of all liability to Commodore Sales Acceptance, giving Dalite Corporation in the result the sum of \$1,091,000. Since this arrangement involved the now familiar switch of Commodore Sales Acceptance indebtedness without any repayment being made, and the further

advance by that company of \$1,091,000, either to the Berlin bank or its Canadian subsidiary Hugo Oppenheimbank (Canada) Limited, it is not surprising that Last took the initiative. He produced before the Commission a number of documents drawn by Messrs. Roberts, Archibald, Seagram & Cole, the Toronto solicitors of Dalite Corporation. The first was a letter of intent, dated May 28, 1965, to establish the terms of an intended agreement between Commodore Sales Acceptance, Dalite Corporation and Eugene Last.¹ It reads as follows:

“LETTER OF INTENT

BETWEEN:

COMMODORE SALE ACCEPTANCE LIMITED,
— and —
DALITE CORPORATION (CANADA)
LIMITED,
— and —
EUGENE LAST

The accounts between the parties will be settled as follows.
Commodore will:

1. discharge or arrange for discharge of all liabilities owed to it and other associated companies, including Adelaide Investments Limited, Aurora Investments Limited and Hilltop Holdings Limited, by Dalite and Last and will release all debentures and other securities, and
2. arrange that a note for \$1,000,000 with sufficient collateral will be obtained from Mr. Alan Manus as evidence of his debt to Daylite of Grand Bahama Company Limited and the value of this note will be provided by Commodore to Dalite as working capital.

Dalite will:

1. assign and transfer to Commodore or as it may direct its accounts receivable from Daylite Grand Bahama and subsidiary companies, its shares of Daylite Grand Bahama and its shares of D.H.I. Limited.

Last will:

1. Forthwith upon the execution and delivery of the promissory note above mentioned execute all necessary resignations for himself and his nominees as officer and director of Daylite of Grand Bahama Company Limited and Bahama Entertainment Company Limited, San Jose Construction (Bahamas) Limited and The Lucayan Marina Limited, and will assign the shares therein as Commodore directs.

It is the intent that upon conclusion of these arrangements Daylite will execute all conveyances, transfers and documents necessary to

¹Exhibit 3201.

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transfer to Lucayan Beach Hotel and Development Company Limited the marina and one hundred and fifty apartments now erected adjacent to the Lucayan Beach Hotel.

The parties agree that this letter of intent will be supplemented by a formal agreement between the parties.

DALITE CORPORATION (CANADA) LIMITED
'E. Last'
PRESIDENT."

This letter was not signed by Commodore Sales Acceptance because, as Last explained, Morgan agreed to it in principle and a draft agreement embodying its terms was then produced.² The draft agreement set out in some detail the manner in which this letter of intent was to be implemented, but, since it was never executed, its reproduction would be otiose. It will suffice to say that the manner in which the note from Allen Manus was to be discounted, at a figure not disclosed, required Commodore Sales Acceptance to guarantee a bank loan to Dalite Corporation up to the limit of the amount of discount settled upon, pending payment of the note when it fell due. In the draft, dated June 3, 1965, the words "San Jose Construction (Bahamas) Limited" were deleted from a provision whereby Last would "execute all necessary resignations for himself and cause to be executed such resignations for his nominees as officer or director of Dalite of Grand Bahama Company Limited and its subsidiary companies including Bahama Entertainment Company Limited and The Lucayan Marina Limited, and will arrange for the assignment of shares in such companies controlled by him or his nominees as Commodore may direct." Last said that he had obtained Morgan's agreement to San Jose remaining as his own property, but he went so far as to write a letter to ~~Bernard A. Thomson~~^{*}, Graham's associate in Nassau, enclosing undated resignations of himself from Daylite of Grand Bahama, Bahama Entertainment, San Jose Construction and the Lucayan Marina Limited, together with 55,000 £1 shares of Daylite of Grand Bahama endorsed in blank, to be held in escrow until Thompson was advised by Roberts, Archibald & Co. to release them to Hugo Oppenheimbank (Canada).³ The period of escrow was to last for sixty days and to terminate failing release by this means, and the letter is acknowledged at its foot by Bernard A. Thompson.

This re-arrangement of the affairs of Commodore Sales Acceptance and Dalite Corporation never materialized and, indeed, it had many impractical aspects; but, according to Last, negotiations proceeded up to the eve of the collapse of Atlantic. Two practical results occurred. At some point in May of 1965 C. P. Morgan, by the hand of one of his employees according to Last, returned, with no written comment, the share certifi-

²Exhibit 3205.

³Exhibit 3204.

cates for 1,507 common shares and 1,025 preference shares of Dalite Corporation issued to Carl Solomon in trust on April 10, 1962, and representing the 25% interest in Dalite Corporation stock given to him by Last at that time. The certificates, which Last produced,⁴ are accompanied by a declaration of trust signed by Solomon, acknowledging his position as trustee for C. Powell Morgan, and dated for an unspecified day in May 1962, together with a covering letter from Solomon to Morgan enclosing the declaration of trust and the certificates, concluding "would you *please* put these Certificates in your safety deposit box or some other place where they can be easily located." Last described Morgan as saying that he was too busy with the Lucayan Beach development to continue his participation in the affairs of Dalite Corporation. At the same time, and apparently pursuant to an undertaking given to Morgan, Last himself and members of his staff withdrew from Grand Bahama, and Julian O'Reilly and his foreman took up their station in Miami, turning over the operation of Daylite of Grand Bahama to Jack Tramiel and Morgan's representatives on the spot. Last described this development as a result of his first disagreement with Morgan. The breach was temporarily healed, and he gave the following account of what transpired at a critical point in the history of Atlantic Acceptance:⁵

"A. Daylite (Grand Bahama) had several smaller contracts under construction, duplexes and so on, and they tried to run that business. What transpired over there I would not know, but Mr. Morgan called me on Saturday for a meeting on Sunday morning prior to Atlantic collapsing.

Q. How long prior?

A. One day.

Q. This would be Sunday, 13th June?

A. Right. He requested me to see if I could get my staff back on the Island, because he has a problem with his own staff, for a short period of time, until he gets proper personnel in proper places.

Q. When did he call you?

A. He called me on Saturday morning to arrange a meeting for Sunday morning.

Q. Where did you meet?

A. At my office at 75 Brown's Line.

Q. Just yourself and Mr. Morgan?

A. Just myself and Mr. Morgan.

Q. Did Mr. Morgan state why he was dissatisfied?

A. No, he did not state why. He just stated he had problems, and right in front of him I picked up the phone and I called Miami. I got hold of

⁴Exhibit 3206.

⁵Evidence Volume 65, pp. 8778-85.

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Julian O'Reilly. Julian could not believe that I asked him to go back to the Island, so I let him even speak to Mr. Morgan, and finally I gave him instructions to go back to the Island and get his staff back and take control and run it until further notice.

Q. Why did not he believe that Mr. Morgan would want him back on the Island?

A. Because the way Mr. Cockburn explained apparently to him.

Q. To Mr. O'Reilly?

A. To Mr. O'Reilly. He was running the whole show there with Mr. Tramiel. He did not need anybody. He was completely surprised to hear that.

Q. Now, when did this change in management staff of Daylite (Grand Bahama) take place?

A. I would say about three or four weeks prior to that.

Q. About the last week in May then?

A. Yes.

Q. Now, up to this time nothing had been done by Commodore Sales Acceptance; for example, they had not even signed any document, not even a letter of intent, indicating that they were going to carry out the discussions which you had with Mr. Morgan. Where did that transaction stand?

A. Well, at the same time when we had the meeting on Sunday, as a matter of fact Mr. Morgan was away from the 3rd. I don't recall, but I couldn't get hold of him. When he came back from New York on Saturday and called me, or Friday night and he called me on Saturday, at the same meeting on Sunday he went through the agreement and he agreed in principle. He says, 'This is what we want; you get this in final form and we will sign it on my return from New York'. He was going to New York on Monday morning arranging the five million short term loan what he stated he had arranged with Chase, and on the execution of that he will come and sign the agreement; but he still requested me to keep my staff on the Island for at least a month until he found proper personnel for proper places.

Q. Now, he said he was going to New York the next day, for what purpose?

A. To finalize the short term loan of five million from Chase.

Q. And by Chase, did you understand him to mean the Chase Manhattan Bank?

A. Yes.

Q. Did he express any concern as to whether or not he would be able to arrange that?

A. He stated that he had arranged it on Friday, and he was going to finalize it.

Q. How long did he expect to be in New York?

A. He was supposed to meet me in New York on Monday afternoon.

Q. And you were to go to New York, were you?

A. I was going to New York on some other matter pertaining to Dalite. He was supposed to meet me in the afternoon. On Monday morning I was with Mr. Thomson, one of my associates in New York.

THE COMMISSIONER: I am sorry, I did not hear that. You were with Mr. Thomson?

A. James Thomson, one of my associates in New York, when we had a phone call about Atlantic collapsing and also about the scandal of fraudulent cheques and stock sales, orders for stock and so on, the whole thing.

MR. SHEPHERD: Who called you about this?

A. One of the gentlemen that arranged a luncheon meeting with us for arranging high finances for Dalite (Canada).

Q. Who is that?

A. Jim Bender.

Q. B-e-n-d-e-r?

A. Right.

Q. What firm is he with?

A. I couldn't tell you right now. I don't recall.

Q. Is he an investment dealer?

A. No. He is an accountant for a number of banking groups.

Q. From whom did you hope to get the money?

A. We were arranging with the Rockefeller Foundation.

Q. You were dealing with Mr. Bender and Mr. Bender hoped to be able to get the money which Dalite would require from the Rockefeller Foundation, is that right?

A. That is right.

Q. That, I take it, did not go through?

A. Well, as a matter of fact, we had a luncheon meeting with Mr. Bender on the arrangement and the principal from the Rockefeller Foundation, when we received a call, 'Forget about luncheon, because Atlantic just went down the drain'.

Q. Are you sure this would be on the Monday, or would it be on the Tuesday?

A. No, it was on a Monday.

Q. Then when did you see Mr. Morgan again?

A. I saw him for a few minutes late in the afternoon.

Q. And where did you see him?

A. In New York, I believe in his hotel room.

Q. What was the conversation?

A. He just did not know what transpired. He did not know what to do. He just said he did not know who started this fraudulent action on the stock which hurt his arrangements.

Q. Do you refer now to the cheques which came in in respect of Racan Photo-Copy and other companies, from the Bahamas?

A. Right.

Q. What did he say about that, please?

A. He said that hurt his arrangements for a loan, the people backed away.

Q. Did he say how it hurt or in any way affected his arrangements?

A. Apparently, my understanding was from him, that at the time that he was arranging that five million, not for Atlantic but for Commodore Sales, and the minute the newspaper hit the street, the banks just did not want to have anything to do with Commodore, even Commodore Business Machines stock was involved, and a few others, which the bank knew they were in the same group. This was the indication he gave me.

Q. How long did this conversation, this meeting, last?

A. Oh, about an hour.

Q. What was the whole of the conversation?

A. Well, the whole of the thing was he was just walking around worrying who would ever do that to him, because he felt that somebody deliberately did that to him, by these fraudulent cheques.

Q. He was expressing the view that the act of signing the fraudulent cheques and the orders to purchase shares, which proved ultimately to come from a non-existent purchaser, was in some manner directed at him?

A. Exactly.

Q. Did he say why he thought that those orders were intended to injure him?

A. Well, if you could have seen him you would not ask the guy. I mean, he was really worried about the whole thing, so there was not much questions asked at all.

Q. He was upset?

A. Very, very badly.

Q. From his conversation was it evident that he had received notice that the bank had returned a cheque for \$5,000,000?

A. Right."

As to the quality of the work done by Dalite Corporation and Daylite of Grand Bahama at Lucayan Beach time alone will tell. Like many contractors, who started in a small way immediately after the war, and prospered in a time of scarcity when almost any kind of production was profitable and quality was at a discount, Eugene Last had little idea of costing and none of the internal control necessary to run a large business in a prudent manner. That this must have been known to Morgan and his close associates at the beginning of their dealings with Last is clear from the existence of a report by H. K. Cooper, C.A.—the impresario of Crest Acceptance Limited—found in the 1962 audit file of Walton, Wagman & Co. and dated February 16 in that year.⁶ This is entitled “Dalite Corporation (Canada) Limited—Confidential Report Re Contract Estimating and Costing Methods.”

“A survey of the methods employed by the Company in determining tender prices on pre-fab buildings for the Department of Northern Affairs revealed the following points:

MATERIAL AND MECHANICAL:

Exact material quantities and costs were not known at the time the tender was submitted. From the Government's specifications and the Company's previous house plans (similar to the present specifications) Mr. Hogg “took off” estimates of the material quantities required. Mr. Hogg is sales manager of the Company, but has been doing estimates for various contracts. Prices for the material quantities estimated were calculated according to the Company's experience with existing suppliers plus obtaining some prices from others.

With the tender accepted by the Government, for \$480,000.00 of the projects total of \$510,000.00, the Company's draftsman is now working out the exact material quantities required. Also, the Company is now shopping for competitive prices on material and mechanical supplies. This is being done not by one man but by three—Messrs. Last, Goldberg and Hogg,—each covering a particular group of materials and mechanical supplies. Results of this shopping have shown considerable savings in prices as compared to the original estimated costs.

In future, it is planned for the draftsman to supply exactly quantities, and for all prices to be obtained by Mr. Scriven who will also be responsible for flow of production, materials into production and of mechanical supplies into warehouse for shipment with completed product.

LABOUR AND FACTORY BURDEN:

The labour cost involved in the production of the pre-fab panels and handling of component mechanical parts is unknown. Not only to the writer who has just entered the scene, but to the management who have been handling the product for some time. Needless to say the factory burden and its apportionment is also a mystery.”

⁶Exhibit 1716.2.

The report draws attention to a basic weakness in the Dalite organization throughout its history, a failure not only to understand the principles of management but to observe those of business morality. Many illustrations of this obliquity have, in the course of this account, been culled from the records of the operation on Grand Bahama, and once the apparently inexhaustible financing of Commodore Sales Acceptance had been secured to him, the ignorance, vanity and cupidity of Eugene Last completely overshadowed his ability as a tradesman and promoter of business. A substantial file of complaints back and forth between Daylite of Grand Bahama and its sub-contractors was produced,⁷ but there is no evidence that it was inordinately large, or revealed excessive friction in view of the many enterprises undertaken. Lucaya Construction Company blamed Daylite of Grand Bahama for delays and errors in supplying the prefabricated components of buildings manufactured by Dalite Corporation in Toronto, and Daylite of Grand Bahama, through the picturesque comments of its superintendent, Julian O'Reilly, in turn blamed Lucaya Construction for delays and slipshod workmanship, particularly in the case of "native labour." On the whole, the experiment with prefabricated buildings was a structural success in the favourable climate of Grand Bahama Island and Last was proud of the speed of construction, especially in the case of the 110 efficiency units.

The End of Dalite

When Atlantic Acceptance went into receivership and all his hopes and schemes for Dalite lay in ashes, Eugene Last reacted as resolutely as had Jack Tramiel in the case of Commodore Business Machines, and quite predictably. Until August 10, when it was appointed receiver, the Clarkson Company acted merely as agent of Commodore Sales Acceptance, the security of which, represented by debenture, was sufficient to give it absolute control over the affairs of Dalite Corporation and to exclude the claims of other creditors save Adelaide Acceptance. In writing to H. H. Robertson Company Limited of Hamilton on August 3, in reply to an offer to purchase the Dalite operation, D. Gardner had the following to say:¹

"Our position is as agent for the secured creditor whose security covers all of the assets by way of a floating charge debenture.

In this capacity we are, and have been for some time, negotiating with the present operator, Mr. E. Last, under which he would buy our security and take over the company including its operating assets and other debts."

It is to be assumed that the writer at this point did not know his man, because the breathing space provided between the end of June and

⁷Exhibit 3178.

¹Exhibit 3923.

August 10 enabled Last and his brothers, Michael and Victor, Lillian Casselton and Samuel J. Hogg to dispose of some Dalite assets for the benefit of a new company incorporated to carry on the Dalite business. On August 12 letters patent were issued to a company called Lasco Products Limited, the first permanent directors of which were Samuel J. Hogg and Victor Last who were joined in September by Lillian (Martin) Casselton. The head office and premises of the new company were at 1017 Seneca Avenue, Lakeview, Port Credit, Ontario, at a convenient but substantial distance from the Dalite plant on Brown's Line, and its undertaking was expressed to be in particular the manufacture of laminated wood products. In November of 1965 supplementary letters patent were granted to change the name of the company to Panfab Corporation Limited.²

Between June 30 and August 5, 1965 Commodore Sales Acceptance advanced to Dalite Corporation \$26,702.44 to enable it to stay in business, and this sum was spent to defray the cost of salaries and wages, telephone bills and other routine expenses.³ While these advances were being made, it is quite clear, from the evidence given by Lillian Casselton,⁴ A. J. Meikleham and finally B. W. McLoughlin of Touche, Ross, Bailey & Smart, who analysed the documentary evidence,⁵ that items of Dalite inventory and accounts receivable upon which Commodore Sales Acceptance had a claim, by virtue of the floating charge and an assignment of book debts, were being converted to uses which were not for the benefit of Dalite, but for that of the Last group individually and through Lasco Products. Since the earliest days of Dalite's corporate life scrap materials had been sold "out the back door" and paid for in cash to Victor Last, whose income was regularly supplemented in this way at the direction of his brother Eugene. At least one scrap dealer, Mendel Apelowicz, a former employee of Dalite Corporation carrying on his business in Willowdale, Ontario, testified to this practice.⁶ A transaction of some magnitude was described in evidence by Victor Last, and by Jack Mamann, carrying on the business of buying and selling "distress merchandise" in Toronto under the names of Mamann Brothers and Continental Jobbers. Mamann made contact with Dalite Corporation through Arthur B. Drohan. During the months of July and August, 1965, and commencing specifically on July 28, Mamann paid Dalite \$24,500 in cash—cash in this case being currency—for aluminum, stainless steel and "styrofoam" insulation material, which in some cases had been part of its inventory for over a year. Only one receipt was discovered in the rudimentary files of Continental Jobbers at 280 College Street, signed by Victor Last for

²Exhibit 3994.

³Exhibit 3928.

⁴Evidence Volume 96.

⁵Evidence Volume 97.

⁶Evidence Volume 97.

\$4,000,⁷ and it is probable that this amount was all that found its way into the company's bank accounts. In any event, no accounting was given of this transaction to Commodore Sales Acceptance and the Clarkson Company. Mr. McLoughlin also produced in evidence a number of invoices and bills of lading as evidence of shipments by Lasco Products. Two examples of transactions illustrated by these, with matching purchase orders, may suffice. On June 3, 1965 the W. S. Tyler Company of Canada Limited, of St. Catharines, Ontario, ordered two sets of "Formica-faced wainscots" at a price of \$307.10 per set, free on board that company's plant.⁸ These were shipped on August 3 according to the records of the carrier, McAnally Freight-Ways, from Dalite Corporation, 75 Brown's Line, Toronto,⁹ and on August 11 the W. S. Tyler Company was billed in the amount of \$614.20, less a 2% discount, on an invoice with the heading "Dalite Corporation (Canada) Ltd." scored out and the words "Lasco Products Limited, 1017 Seneca Avenue, Lakeview, Port Credit, Ontario" superimposed. The words "in inventory" are stamped on the face of the invoice¹⁰ and by cheque dated September 15 the W. S. Tyler Company paid the amount of the invoice to Lasco Products Limited.¹¹ A further refinement of impropriety may be found in the fact that Lasco Products Limited dated the invoice one day before the date of its own incorporation. The second example involves a purchase order of George Rathbone Lumber Company Limited of Toronto, directed to Dalite Corporation (Canada) Limited at 75 Brown's Line and dated July 16, requiring delivery of arborite table tops as specified.¹² These were delivered by Finch Transport¹³ on August 3. By another altered invoice, dated August 11, the George Rathbone Company was billed in the amount of \$104.72¹⁴ and payment was made to Lasco Products Limited by a cheque dated September 28 in that amount.¹⁵ The total amount thus diverted into the coffers of Lasco Products cannot be reliably estimated and is perhaps insignificant as a loss to Commodore Sales Acceptance, but, as an example of the business morality of Eugene Last and his employees, deserves to be mentioned. When, on August 20, an auction of the inventory of Dalite Corporation was conducted by Maynard's, auctioneers employed by the receiver to sell equipment and inventory, finished goods and goods in process, it produced some \$92,000 net, and might well have produced more had not these irregular and dishonest transactions intervened. The petition of Commodore Sales Acceptance Limited was filed on July 15, 1965, the

⁷Exhibit 3949.

⁸Exhibit 3943.

⁹Exhibit 3944.

¹⁰Exhibit 3945.

¹¹Exhibit 3946.

¹²Exhibit 3937.

¹³Exhibit 3938.

¹⁴Exhibit 3939.

¹⁵Exhibit 3940.

receiving order was made on August 31 and the Clarkson Company Limited was appointed trustee. A statement of affairs dated September 14¹⁶ showed amongst the assets accounts receivable stated to be \$7,336,-756.35, of which amount \$18,516.47 was regarded as good, \$7,035,-261.79 as doubtful and \$282,978.09 as bad. On the list of creditors those secured are shown as only Commodore Sales Acceptance Limited claiming \$4,473,885.66 and Adelaide Acceptance Limited \$126,184.65. All of the accounts receivable from Daylite of Grand Bahama, shown as amounting to \$6,726,357, were classified as doubtful. By July 31, 1967, or approximately two years after Dalite Corporation had been declared bankrupt, the trustee had realized from the accounts receivable the sum of \$86,436.52. An interim statement of receipts and disbursements for the period August 11, 1965 to July 31, 1967 has been supplied to the Commission by the trustee and is as follows:

Receipts

Proceeds of auction sale	\$92,364.37	
Collection of accounts receivable	86,436.52	
Interest on deposit receipts	9,417.13	
Cash surrender value of insurance	7,045.49	
Workmen's Compensation refunds	1,965.92	\$197,229.43

Disbursements

Rent payments	10,956.48	
Legal expenses	500.00	
Moving and storage	342.40	
Travel expenses	241.88	
Telephone	217.37	
Bankruptcy expenses	459.01	
Hydro	66.02	
Insurance	55.71	
Bank charges	39.40	\$ 12,878.27
Excess of receipts over disbursements		<u>\$184,351.16</u>

Interim distribution

Commodore Sales Acceptance Limited	\$135,000.00
Adelaide Acceptance Limited	15,000.00
	<u>\$150,000.00</u>

A special resolution passed at an extraordinary general meeting of the shareholders of Daylite of Grand Bahama, held on July 22, 1965 and confirmed on August 6, approved the voluntary winding up of the company and the appointment of Mr. Biddell of Clarkson's as liquidator.¹⁷

To what extent C. P. Morgan was in measurable distance of getting rid of both Eugene Last and Allen Manus in the spring of 1965 must

¹⁶Exhibit 2917.

¹⁷Exhibit 4957.

remain a matter of speculation, but there is no doubt about his intention to do so. The concluding words of his testimony to the Commission before entering hospital should be reproduced. They came as a result of questions put by Mr. Shepherd as to why he had relied on Eugene Last for so long and given him such a free rein.¹⁸

"A. I was in this kind of a position, Mr. Shepherd, that this was 1,600 miles or 1,800 miles away from here and my visits were what I would call or classify as infrequent, and Last used to, as you can tell from his travelling expenses, he used to travel extensively, and I sent Cockburn down there to check out all the vouchers and check the on-site transactions. I sent Saunders down there to verify the existence—and kept him down there—to verify the existence of the payroll, starting with the construction down there, and, generally, I had somebody on top of Last at all times with regard to the expenditure of money, but he was a great man for getting invoices.

Just in passing, he transported his boat from here down to the Bahamas. He was able to get it air-conditioned and fixed up and somehow got it charged into the construction of the Marina, with the assistance of certain, I would say, corporations in the U.S. who don't care what they say on their invoices as long as they get paid.

And these charges were picked up by Cockburn later in the analysis of the costs.

There is no question about it that he not only milked the company from the point of view of an abnormal number of dollars in travelling expenses but he no doubt had other irons in the fire because he was making continual trips to Panama and South America, and went practically every day from Freeport to Nassau and lived in Miami at the Miami Airport Hotel, and generally—and then in addition created two assets down there, one of which I was able to get back, which was the Drivers' Club and the other asset was this San Jose Construction Company, out of the costs of the buildings and equipment which were being charged to the Hotel company.

So Manus had a very legitimate beef about the costs which were charged with regard to the Marina to the motel units when all of this was going on underneath the surface.

Q. Did one of your servants sent down charged with the responsibility of examining all these invoices of Dalite report to you that Mr. Last had his yacht air-conditioned by a firm called Ribovich in Florida, which, at least as it was reported to you, issued two invoices which aggregated the sum of \$11,000 approximately for plumbing which was then paid by Dalite Grand Bahamas?

A. And charged to the Marina. That is what I just finished saying.

Q. Yes. When you learned that I was struck by the fact that you did not take any action with respect to Last?

A. I took action to try to nail the yacht as far as Last was concerned and he took it off the Island. He was very elusive.

¹⁸Evidence Volume 26, pp. 3520-4.

By this time, by the time I got most of this information, Atlantic had gone or was about to go up the flue and I didn't have a chance.

Q. Were you ever at any time subjected to any unreasonable degree of pressure from Mr. Last to continue enabling him to finance his various ventures?

A. No, never at any time.

Q. Well then, the account you have given of the Lucayan Beach venture, does it consist in essence of this, that you assert you went into it in the first place thinking that for a comparatively modest expenditure of money, if \$250,000 can be said to be modest, that you would find a suitable climate and a suitable area in which the prefabricated houses of Dalite might be used to advantage and that thereafter, by reason of the events which you have described, you were slowly and almost imperceptibly pulled deeper into the mire, sort of step by step, meaning to protect that which had gone before?

A. There is no question about it, that I was just pulled right into it, and it got down to the point where it represented a major item as far as Atlantic was concerned.

If I had got the \$900,000 in the form of mortgage money—

Q. The \$9,000,000?

A. The \$9,000,000, I am sorry, in the form of mortgage money, which Mr. Weinrott had indicated was coming, this would have, in my opinion, enabled Atlantic to have passed the crisis.

However, it did not come. But I am so sure in my own mind that for every dollar that was put in there every penny plus could be got out of it because it is that good an investment. That is not anything which I can have any pride in but it is just the fact that I felt all along as I went along that regardless of the thievery that went on in the complex, that this was only chicken feed compared to the value of the investment that was being created.

For that reason when it came down to the 11th hour and the shares which represented the control of this enterprise were given by me at their original cost to the Trust Company, so that they could control the enterprise, I feel that that is an important thing in the ability of Atlantic to have got control of 90-odd per cent of this company, and I feel they will get every nickel that has been invested in it plus the usual regular interest out of it."

The final observation may still produce painful echoes in the ears of officers of the Montreal Trust Company. Only in 1967 has the operating company under contract to Lucayan Beach Hotel and Development Limited shown signs of making a profit. The hotel itself remains as the most considerable of the unrealized assets of Atlantic Acceptance. The prospects for its disposal at a figure which will recover for Atlantic the very large sums of money expended through its subsidiaries by way of loans to and investment in the Hotel Company, both before and after

the date of its receivership, is the one great imponderable in estimating the extent of Atlantic's loss. Both Dalite Corporation and Daylite of Grand Bahama are involved in the result, and the state of the accounts among them cannot be resolved until that result is known. None of the receivables collected by the trustee of Dalite Corporation include any amounts owing to it by Daylite of Grand Bahama.

* * * *

An "Inappropriate Venture"

My narrative of the relevant events and transactions of Morgan's gamble in the Bahama Islands is thus concluded on an inconclusive note. It was, as Mr. Haxton of the Montreal Trust Company said, a quite inappropriate venture for a company engaged in the acceptance finance business, and it was pursued at every step by improper means. Although Morgan described his attendances on Grand Bahama Island and in Nassau as infrequent, the amount of time which he devoted to the Bahamian problem diverted his attention at a critical time from the development of Atlantic's profitable small loans business which was the main hope for permanent recovery. The last throw of the dice was to retrieve all the losses created by years of imprudence and impropriety, and the measure of his desperation may be discerned in his reliance upon men of the calibre of Manus, Last, Thomson, Timmins and Weinrott to produce a feasible financial solution. For the rest, the climate of the Bahamas for investment and development does not at this stage appear to be as salubrious as its geographical counterpart. A combination of licensed gambling and immunity from income tax is bound to attract the type of enterprise which tarnishes by association the reputation of any legitimate undertaking. The well-known motto which appears under the coat-of-arms of the colony—"Expulsis piratis commercia restituta"—has a mocking sound under present conditions, and the sober investor, as well as the regulatory authorities whose business is to inform and protect him, must take into account the fact that the pirates are still much in evidence on these islands, and have penetrated into every corner of their life and polity.

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